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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

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IN THE

District Court of the United States,

FOR THE DISTRICT OF NEW JERSEY.

No. E-5865.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET ALS.,

v.

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET ALS.

DOCKET ENTRIES.

Jan. 7, 1938.	Bill of Complaint filed.
Jan. 7, 1938.	Subpœna issued.
Jan. 15, 1938.	Subpœna returned served January 11th, filed.
Jan. 29, 1938.	Notice of Motion for Bill of Particulars filed.
Feb. 7, 1938.	Hearing on Motion for Bill of Particulars. Motion granted as to #1 of Particular #10, Denied as to others. 5 days to Answer Particulars, 5 days to file Answer of Defendants. (Clark)
Feb. 9, 1938.	Order Requiring Bill of Particulars filed.
Feb. 17, 1938.	Bill of Particulars filed.
Feb. 19, 1938.	Answer of Defendants filed.

Feb. 21, 1938.	Notice Fixing Place for Trial filed. (Newark)
June 1, 1938.	Final Hearing. Motion to Dismiss, Denied. Adjourned to June 2.
June 2, 1938.	Final Hearing Continued. Adjourned to June 3.
June 3, 1938.	Final Hearing Continued. Adjourned to June 7.
June 7, 1938.	Final Hearing Continued. Adjourned to June 8.
June 8, 1938.	Final Hearing Continued. Adjourned to June 9.
June 9, 1938.	Final Hearing Continued. Adjourned to June 10.
June 10, 1938.	Final Hearing Continued. Adjourned to June 14.
June 10, 1938.	Amendment by way of Supplement filed.
June 14, 1938.	Final Hearing Continued. Adjourned to June 15.
June 15, 1938.	Final Hearing Continued. Adjourned to June 16.
June 16, 1938.	Final Hearing Continued. Adjourned to June 17.
June 17, 1938.	Final Hearing Continued. Adjourned to June 20.
June 20, 1938.	Final Hearing Continued. Adjourned to June 21. Decision Reserved on Motion to Quash Subpœna.
June 21, 1938.	Final Hearing Continued. Adjourned to June 23.

June 21, 1938. Affidavit filed.

June 22, 1938. Memorandum in Support of Application filed.

June 23, 1938. Amendment to Answer filed.

June 23, 1938. Final Hearing Continued. Adjourned to June 30. (Clark)

Aug. 1, 1938. Further Amendment to Answer filed.

Oct. 27, 1938. Opinion filed. (Clark)

Nov. 2, 1938. Testimony filed.

Nov. 5, 1938. Objections to Form of Proposed Decree, filed.

Nov. 5, 1938. Consents and Objections to Findings of Fact, filed.

Nov. 7, 1938. Findings of Fact and Conclusions of Law, filed.

Nov. 7, 1938. Final Judgment and Decree filed.

Nov. 7, 1938. Notice of Appeal filed. (Copy to Frazer & Circuit Court.)

Nov. 21, 1938. Receipt from Circuit Court filed.

BILL OF COMPLAINT.

(Filed January 7, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,

Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City,

Defendants.

To the Honorable the Judges of the United States District Court for the District of New Jersey:

Plaintiffs, Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union, respectfully show that:

1. Plaintiff, Committee for Industrial Organization (hereinafter called CIO), is a voluntary committee of various labor organizations throughout the United States, and has its principal office in the District of Columbia. It has for its main purposes the organization of unorganized workers into voluntary labor organizations to be affiliated with said committee, to the end that said labor organizations shall act as the collective bargaining agencies, on behalf of their respective members in respect to wages, hours of work, and other terms and conditions of employment, in order to seek and obtain improvements in the working conditions aforesaid; and the active and continual assistance of its affiliated labor organizations in their endeavors to stabilize their respectve industres and elevate the working conditions therein. It has actively engaged in the work as aforesaid in Jersey City and elsewhere, and has a lawful right to continue so to do.

2. Plaintiff, Steel Workers Organizing Committee of the Committee for Industrial Organization, is a voluntary organization affiliated with the plaintiff, CIO, and engaged in the organization of employees in the steel industry into the Amalgamated Association of Iron, Steel and Tin Workers, a national labor organization consisting of approximately 500,000 members in the United States, including approximately 10,000 members in New Jersey. Plaintiff, United Electrical Radio and Machine Workers of America, an affiliate of CIO, is a national unincorporated labor organization, having its principal office in New York City, and having a membership of approximately 125,000 workers throughout the United States, including approximately 10,000 Workers in New Jersey. Plaintiff, United Rubber Workers of America, an affiliate of plaintiff, CIO, is an unincorporated national labor organization having its principal office in Akron, Ohio, and having a membership of approximately 75,000 throughout the United States, including 8000 members in New Jersey. Each of these plaintiffs has actively engaged in the organization of unorganized

workers in Jersey City and elsewhere employed in their respective industries to the end that collective bargaining agencies may be established on their behalf, and improvements in the working conditions of all workers within their respective industries may be obtained, and has a lawful right to continue such activities.

3. Plaintiff, William J. Carney, is director for the State of New Jersey of the plaintiff, CIO, and plaintiffs, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the CIO, who have been assigned by it to work under the supervision of plaintiff William J. Carney in the organization of CIO trade unions within the State of New Jersey.

4. Plaintiff, American Civil Liberties Union, is a membership corporation organized and maintained for the purpose of protecting the rights to freedom of speech, the press, and assembly, as guaranteed to the people by the Constitution of the United States and the Constitutions of the respective States. In furtherance of these purposes, the said plaintiff has come to the aid of persons and organizations whose constitutional, civil and property rights are infringed by unlawful action of public authorities and others, and to this end said plaintiff arranges public meetings for the full and free discussion of constitutional issues, with particular reference to the status of civil rights in the United States and in municipalities in the several States. In furtherance of its purposes said plaintiff raises funds by solicitation of, and contributions from the general public, and these funds are used to carry on its work and the work of other organizations similarly engaged.

5. The defendant, Frank Hague, is Mayor of the City of Jersey City; the defendant, Daniel J. Casey, is Director of Public Safety of Jersey City; the defendant, Harry Walsh, is Chief of Police of Jersey City, and the defendant, The Board of Commissioners of Jersey City, is the governing body of Jersey City.

6. This is a suit of civil nature, in equity, arising under the Constitution and laws of the United States, in which the amount in controversy exceeds $3000 exclusive of interest and costs.

7. This is a suit of a civil nature, in equity, to redress the deprivation, under color of state law, statute and ordinance, of rights, privileges and immunities secured by the Constitution of the United States and of rights secured by laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States.

8. For some time prior to November 29, 1937, the defendants, acting under instructions and domination of defendant Frank Hague, had denied to plaintiffs Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley the right to hold any lawful meetings within the territorial limits of Jersey City, County of Hudson and State of New Jersey. Said denial was based by the defendants, acting under the purported authority of their respective offices, upon the allegation made by them that said plaintiffs are Communists or Communist organizations and that they were therefore required, under the terms of an ordinance of Jersey City adopted January 21, 1920, annexed hereto and marked Schedule A and made a part hereof as though fully set forth, to obtain from the defendant Harry Walsh, Chief of Police of Jersey City, permits for any meetings. Said plaintiffs charge that said ordinance is in violation of the Constitution of the United States, on its face and as applied to said plaintiffs, as more specifically set forth hereinafter.

9. Said plaintiffs respectfully show and charge that the conduct of the defendants and the announcement of their policy as aforesaid was and is in pursuance of an unlawful

plan and conspiracy entered into by said defendants as public authorities of the City of Jersey City to forbid all meetings organized by said plaintiffs for the purpose of discussing the work of the CIO. The defendants have enforced a censorship by informing owners of meeting halls in the City of Jersey City that a permit is required from the chief of police under the ordinance marked Schedule A, before any meeting organized by said plaintiffs in behalf of the CIO may be held, and have threatened to enforce against such owners the penalties prescribed in said ordinance of a term of imprisonment not exceeding one year or a fine not exceeding $300, or both. The defendants have also intimidated the owners of meeting halls against renting such halls to said plaintiffs or their representatives by threats, express or implied, to effect increases in tax assessments, deprivation of licenses otherwise available, and minute police regulation over the conduct of their business, and by charging that said plaintiffs and those affiliated with them would, at such meetings, speak upon the subject of obstructing the government of the United States and of the State of New Jersey, and would advocate the abolition, overthrow or change of the government of the United States and of the State of New Jersey, and would advocate the use of force or violence against the government of the United States and the State of New Jersey, contrary to the provisions of the ordinance marked Schedule A, so that such meetings would be unlawful without a permit obtained from the chief of police of Jersey City. Said plaintiffs charge that the aforesaid representations concerning the nature of the meetings to be held under their auspices were false and fraudulent; that said plaintiffs intended merely to hold peaceful and lawful meetings for the discussion of the work of the CIO, for the purpose of answering questions propounded by workers in Jersey City as to organizational activities of the CIO; to assist unorganized workers of Jersey City in self-organization, and to organize in Jersey City local units affiliated with CIO; that said

plaintiffs at no time intended to advocate at such meetings obstruction or overthrow of the governments of the United States and of the State of New Jersey, but on the contrary intended to explain to workingmen the purposes and aims of the Wagner National Labor Relations Act adopted by the Congress of the United States and approved by the President of the United States, and the benefits to be derived from said statute by workingmen, and the aid which the Committee for Industrial Organization would furnish workingmen to enjoy the benefits of said statute.

10. Upon the refusal of the defendants acting in their official capacities to permit [illegible]y CIO meeting to be held in Jersey City, plaintiff American Civil Liberties Union, deeming the action of the defendants under purported authority of the ordinance marked Schedule A to be in violation of the Constitution of the United States, attempted to rent a meeting hall in Jersey City for the purpose of holding meetings to discuss the infringement of civil liberties and constitutional rights by the defendants, and said plaintiff was unable to obtain such meeting places because the owners thereof had been intimidated by defendants, acting in their official capacities, against renting to plaintiff American Civil Liberties Union, in the same manner as alleged in the preceding paragraph, and by threats of penalties to be exacted under said ordinance, if plaintiffs were permitted to hold a meeting without a permit first having been obtained by the owner of such meeting place from the chief of police of Jersey City.

11. In furtherance of the unlawful plan and conspiracy to deprive certain workers, labor organizations and others of their civil rights, the defendants, acting under purported authority of their offices, have announced that they will not permit picketing in cases of labor disputes except where, in their opinions, the union involved was bona fide and the strike justifiable, and would eject from Jersey City persons whom they considered undesirable because of their activities in labor organization work. On numerous occasions the

defendants and their subordinates have carried these announcements into effect by actual physical interference with picketing by members of unions which did not meet the approval of the defendants, or in situations where the defendants did not approve the demands of the workers, and by the actual eviction from Jersey City of workers and persons engaged in the organization of workers into labor units. Defendants have announced that under purported authority of their offices they would continue such conduct, particularly with regard to the activities of the plaintiff CIO and the other plaintiffs affiliated with it.

12. Defendants, acting under purported authority of their offices, had, prior to November 29, 1937, also announced that the plaintiff CIO, the other plaintiffs affiliated with CIO and all other persons affiliated with CIO would be forbidden to distribute leaflets, circulars or any other printed matter upon the streets of Jersey City. In making this announcement the defendants purported to act under an ordinance of Jersey City adopted January 22, 1924, annexed hereto and marked Schedule B and made a part hereof as though fully set forth. Said plaintiffs charge that said ordinance is unconstitutional on its face and as applied to said plaintiffs, as more specifically set forth hereinafter. Section 1 of said ordinance purports to forbid distribution of all written or printed matter on any street or public place of Jersey City, and said ordinance makes no provision for a permit under any circumstances. Said plaintiffs charge, however, that said ordinance has been applied by the defendants in a discriminatory manner, distribution of leaflets, circulars and other printed matter of which said defendants approved being permitted in the streets and public places of Jersey City, whereas similar literature of which defendants disapproved has not been permitted by them to be so distributed. Plaintiffs, upon being advised that said ordinance was in violation of the Constitution of the United States, announced that on November 29, 1937, CIO circulars, of the type annexed hereto

and marked Schedule C and made a part hereof as though fully set forth, would be distributed upon certain streets of Jersey City to workingmen and other persons interested in receiving such circulars.

13. The office in which all persons who, under the direction of the plaintiffs, were to distribute the CIO circulars were to meet, is located in a building at 76 Montgomery Street, Jersey City. On the morning of November 29, 1937, under instructions issued by the defendants to the police of Jersey City, the following events occurred:

(a) Police officers were assigned to the station of the Hudson and Manhattan Railway Company in Jersey City; who stopped and attempted to turn back all persons whom they could identify as members of the CIO or who were proceeding to the office hereinbefore mentioned located at 76 Montgomery Street, Jersey City, and did in fact turn back many such persons.

(b) In the court yard back of the building at 76 Montgomery Street a platoon of mounted police were stationed.

(c) Within a radius of several blocks in all directions from said building at 76 Montgomery Street uniformed police and detectives of Jersey City accosted and searched, without warrant, persons, including the individual plaintiffs and their automobiles, confiscated CIO literature found upon such persons or in such automobiles, and forcibly seized and transported several of such persons, including plaintiffs Samuel Macri and William P. McGinn outside of the limits of Jersey City.

(d) Under the direction of the plaintiffs, a number of distributors left the headquarters at 76 Montgomery Street with CIO circulars about 7 A. M. on November 29, 1937, and peaceably proceeded to Exchange Place. After a few circulars were distributed by such persons to individuals who willingly received them, a large

number of uniformed police and detectives of Jersey City converged upon the small group of distributors and forced them toward the pier of the ferries which ply between Jersey City and New York. Seven persons were arrested for alleged violation of the ordinance, a copy of which is attached hereto as Schedule B, and were on the same day sentenced in the First Criminal Court of Jersey City to five days imprisonment. Other distributors were forcibly placed upon ferries and transported to New York City, despite their protests that they were residents of Jersey City or other communities in the State of New Jersey.

(e) Of the remaining distributors, five were arrested on a charge of unlawful assembly, under a statute of New Jersey which defines the crime of unlawful assembly to be the gathering of persons for the commission of such acts of intimidation and disorder having a natural tendency to inspire rational, firm and courageous persons with well warranted fear of serious breach of the public peace. Among the persons arrested upon this charge are plaintiffs Samuel Macri and William P. McGinn who, together with the others arrested upon this charge, were held by the Judge of the First Criminal Court of Jersey City in $1000 bail for the Grand Jury and were confined in the Hudson County jail from about noon on November 29, 1937, until early in the afternoon on November 30, 1937, when bail was furnished and they were released.

(f) After the dispersal of the group of distributors of CIO circulars, as aforementioned, the said distributors returned to headquarters at 76 Montgomery Street, replenished their supply of circulars to replace those which the police of Jersey City had confiscated, and planned to leave said building for the purpose of resuming distribution. When they reached the ground floor, they were prevented by the police, acting under the instructions of defendants, from leaving the build-

ing, the front door having been barred by the police. Among the persons confined in the lobby of said building in this manner were plaintiffs James P. Sweeney, Daniel J. Foley and William J. Traynor. Thereafter the police of Jersey City searched all persons congregated in the lobby of said building, as aforesaid, and confiscated circulars and other matter pertaining to CIO. The police then placed these persons in automobiles against their will and by force and under threats of arrest for violation of the aforementioned ordinance, attached as Schedule B, caused such persons to be transported to various points outside the limits of Jersey City.

14. Since November 29, 1937, the unlawful activities of the defendants acting under purported authority of their offices hereinbefore described have continued unabated to date; defendants have continued to threaten to cause the repeated arrests and prosecution of the plaintiffs and any persons associated with them who are found in Jersey City engaged in any activities on behalf of the CIO; have threatened under color of the ordinances and state statute on unlawful assembly hereinbefore mentioned to cause the arrest and prosecution of any persons holding CIO meetings or distributing CIO literature; have, without arrest, physically interfered with persons known to be engaged in organization activities on behalf of the CIO, and have threatened to continue such interferences; have issued repeated public statements fraudulently stating that CIO is contemplating illegal activities in Jersey City, and asserting that CIO would not be permitted to engage in any organization activities within Jersey City; and have intimidated workers in Jersey City who are members of the CIO and other workers who are sympathetic with its activities. On or about December 27, 1937, the defendant Frank Hague, as Mayor of the City of Jersey City, the person dominating the unlawful activities against CIO hereinbefore described, publicly issued a false and fraudulent

statement to the effect that CIO's "only objective is to crush by terrorism; whose motive is to force itself upon our city for the purpose of destroying life and property by violence." Numerous statements of similar purport had previously been issued by said defendant.

15. On or about December 19, 1937, plaintiff William J. Carney, in his own behalf and in behalf of the other plaintiffs herein, issued a statement of the intention of plaintiffs to hold an open air meeting in Jersey City for the purpose of discussing the CIO movement, the expression of civil liberty in Jersey City, and the necessity of obtaining the constitutional privilege of freedom of speech and the press through such meetings and through the distribution of circulars and pamphlets relating to the constitutional rights and privileges of the workers. Thereafter on December 20, 1937, James A. Hamill, corporation counsel of Jersey City, acting on behalf of the defendants, addressed to plaintiff William J. Carney, a warning and threat of prosecution if the plans as announced were carried out in Jersey City. A copy of said letter is attached hereto and marked Schedule D, and made a part hereof as though fully set forth.

16. On December 17, 1937, plaintiff American Civil Liberties Union, without admitting the constitutionality of an ordinance of Jersey City adopted April 15, 1930, a copy of which is annexed hereto and marked Schedule E and made a part hereof as though fully set forth, but for the purpose of avoiding conflict with defendants, applied for a permit for an open air public assembly, and on December 23, 1937, a similar application for a permit to hold an open air public assembly was made on behalf of the CIO. These applications have been denied, and there are attached hereto and marked Schedule F, and made a part hereof as though fully set forth, said applications and subsequent correspondence pertaining thereto, and plaintiffs charge

that the refusal by defendants to permit plaintiffs to hold the open air assemblies contemplated is in violation of their rights and privileges as guaranteed by the Constitution of the United States.

17. The individual plaintiffs are employees of the Committee for Industrial Organization charged with the duty of advancing by peaceful and lawful activities within the City of Jersey City the interests of said committee and the trade unions affiliated with it. There are located in Jersey City a large number of industrial plants engaged in the manufacture of a variety of products which are processed from raw materials received through the channels of interstate commerce, and which products, upon completion, are largely shipped to other states through various instrumentalities of interstate commerce. The employees of such plants are entitled to the privileges and benefits of the aforementioned National Labor Relations Act of the United States, and plaintiffs are desirous of informing such employees of their rights under such statute, and to this end desire to assemble peaceably within Jersey City and to give information concerning such statute and the aims of the CIO to the public.

18. All of the activities which the plaintiffs have sought and are seeking to engage in within the limits of Jersey City were and are to be carried out in a peaceful, law-abiding manner and without intimidation, fraud, violence, or any other unlawful methods. The defendants, under color of their authority, by acting unlawfully and in defiance of the constitutional rights and privileges of the plaintiffs, have committed or caused to be committed by their agents and police officers acting through their orders and directions, all of the aforementioned illegal acts for the purpose of preventing the plaintiffs and those associated with them from the privilege of renting meeting places, using the streets of the city in the same manner as others have been and are permitted to use them, and

for the purpose of holding public meetings to voice their grievances at the aforesaid actions of the defendants.

19. Plaintiffs charge that defendants have systematically discriminated against plaintiffs in the application of the aforementioned ordinances and statute in that other persons and organizations have been permitted by defendants to do the very acts hereinbefore enumerated which plaintiffs have attempted and still desire to do in Jersey City, whereas said ordinances and statute have been utilized by defendants as a cloak for censoring and forbidding the same privileges, immunities and rights to plaintiffs merely because defendants disapprove of the aims and purposes of the Committee for Industrial Organization represented by the individual plaintiffs. Plaintiffs further charge that said ordinances violate the Constitution of the United States, particularly the provisions hereinafter set forth, and that upon this ground, as well as the discriminatory application of said ordinances against plaintiffs, the acts of defendants, heretofore committed by them and threatened to be continued, were and are unlawful.

20. The activities of the defendants have been in pursuance of an unlawful conspiracy by the defendants to injure, oppress, threaten and intimidate citizens of the United States, including the individual plaintiffs herein, and the remaining plaintiffs, in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States with intent to prevent and hinder their free exercise and enjoyment of rights and privileges so secured.

21. The unlawful acts of the defendants, which defendants threaten to repeat continuously as against the plaintiffs and all persons associated with them, violate the rights of the plaintiffs under the following provisions of the Constitution and laws of the United States:

(a) Article IV, Section 2 of the United States Constitution, which provides that "The citizens of each State

shall be entitled to all privileges and immunities of citizens in the several States."

(b) The provisions of Section 1 of the Fourteenth Amendment to the United States Constitution that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; under which basic civil liberties, including freedom of speech, press and assemblage, are guaranteed against infringement by the several States.

(c) The National Labor Relations Act enacted by the Congress of the United States which provides among other things as follows:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." . . .
>
> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

(d) The Civil Rights Act of the United States, which declares criminal conspiracies to injure persons in the exercise of their civil rights secured to them by the Constitution or laws of the United States.

22. Plaintiffs have suffered by the acts of defendants and will continue to suffer from the acts threatened by

defendants, serious and irreparable injury to their property and personal rights and immunities, whereas defendants, if restrained as hereinafter prayed, will be enjoined merely from the commission of unlawful acts and will be confined to the lawful discharge of their duties as officers of Jersey City and will suffer no damage to their personal or official rights. Defendants have threatened and continue to threaten repeated prosecutions and repeated interferences without arrests and prosecutions in the manner hereinbefore describe; plaintiffs have no adequate remedy at law and only by injunctive relief from this Honorable Court can their rights be properly protected from the unlawful conduct of defendants.

23. The lawful employment of each of the individual plaintiffs has been and is being interfered with by the defendants acting under purported authority of their offices in violation of the Constitution of the United States. The value of the property right of each individual plaintiff in such employment exceeds $3000, exclusive of interest and costs. The plaintiff CIO and each of the remaining plaintiffs has property rights exceeding in value the sum of $3000, exclusive of interest and costs, which have been and are being interfered with by the defendants acting under the purported authority of their offices in violation of the Constitution of the United States as hereinbefore described. The amount in controversy between each plaintiff and each defendant exceeds the sum of $3000, exclusive of interest and costs.

24. The Congress of the United States and the courts have recognized that workers, acting as individuals, cannot compete with giant corporations and other employers of immense power; that the individual worker's right to a livelihood must be implemented by authority to join an organization of co-workers with power to bargain collectively on behalf of all; that otherwise there will be continued inequity, and growing unrest and instability in industry. The activities of the plaintiff CIO engaged in and

sought to be engaged in within Jersey City have all been designed to assist unorganized workers in organizing to the end that their organizations shall act as bargaining agencies on their behalf in respect to conditions of employment; and there is a great need for such activities in Jersey City, among other reasons because of the existence therein of numerous industrial plants and shops in which deplorable working conditions obtain. All of the deprivations of rights and privileges guaranteed by the Constitution of the United States, by the defendants acting under purported authority of their offices as hereinbefore described, have been part of a plan by the defendants, acting under the domination of Frank Hague, to thwart and forestall such organization of workers in Jersey City.

Plaintiffs are without adequate remedy in the courts of law and therefore pray:

1. That the defendants Frank Hague, individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, may answer this bill of complaint and each statement therein made.

2. That the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of defendants, or any of them, be perpetually restrained and enjoined by the injunction of this Court as follows:

(a) From interfering in any manner with the free access by plaintiffs, or by any persons acting in sympathy or in concert with plaintiffs, to, upon and through the public streets, highways and thoroughfares of Jersey City.

(b) From interfering in any manner with any of the plaintiffs in the holding of peaceful meetings organized by them or under their auspices for the purpose of discussing the work of the Committee for Industrial Organization,

and the organization in Jersey City of trade unions to be affiliated with said committee.

(c) From interfering in any manner with any of the plaintiffs in the distribution by them to persons willing to receive the same on the public streets and highways of Jersey City of literature concerning the Committee for Industrial Organization or the National Labor Relations Act, or announcing meetings to be held under the auspices of plaintiffs or the Committee for Industrial Organization.

(d) From intimidating or interfering in any way with any owner or lessee of meeting places or halls in the City of Jersey City for the purpose of preventing such owner or lessee from permitting the use of any such meeting place or hall by plaintiffs for meetings or for any other lawful purpose; and from intimidating or interfering in any way with any owner or lessee of any meeting place or hall in Jersey City for the purpose of coercing such owners or lessees, directly or indirectly, to refuse to allow any of the plaintiffs to use their premises for any lawful purpose.

(e) From seizing or destroying any circulars or other written or printed matter or emblems in the possession of plaintiffs or any other persons acting in sympathy or concert with plaintiffs or any of them.

(f) From interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs, in the holding of any peaceful meetings organized by plaintiffs in the City of Jersey City.

(g) From interfering in any manner with plaintiffs or with any persons acting in sympathy or in concert with plaintiffs in their peaceful conduct of organization activities within the City of Jersey City.

(h) From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person or persons to commit any of the acts enjoined by this Honorable Court.

3. That the defendants, their agents, servants, employees, officers and subordinates under the direction, supervision or control of defendants, or any of them, be perpetually restrained and enjoined by the injunction of this Court from enforcing or attempting to enforce the ordinances of Jersey City described in the bill of complaint in any manner whatsoever which will constitute interferences of the nature sought to be restrained and enjoined in the preceding prayer.

4. That plaintiffs may have such other and further relief as by this Honorable Court may be deemed just and equitable in the premises.

5. That a writ or writs of subpœna may issue commanding defendants to answer this bill of complaint and to abide by such decree as this Honorable Court may make in the premises.

SPAULDING FRAZER,
Solicitor of Plaintiffs.

SCHEDULE A.

PUBLIC NOTICE.

AN ORDINANCE regulating halls and other places used for public meetings.

The Board of Commissioners of Jersey City do ordain:

1. No person, firm or corporation owning, maintaining, operating, leasing or renting any hall, auditorium, room or other place for the holding of public meetings shall rent, lease, hire or permit the use thereof without a permit therefor first obtained from the Chief of Police for any such meeting whereat any person shall speak upon the subject of obstructing the Government of the United States or any State thereof, or advocating the abolition, overthrow or change of the Government of the United States or any such State by any means, method or activity other than those now

allowed by law, or whereat the use of force or violence against the Government of the United States or any such State or government established thereunder shall be advocated.

2. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof be sentenced to a term of imprisonment not exceeding one year or a fine of not exceeding three hundred dollars, or both

Passed January 21st, 1920

MICHAEL I. FAGEN,
JAMES F. GANNON, JR.,
A. HARRY MOORE,
CHARLES F. X. O'BRIEN,
FRANK HAGUE,
Commissioners.

FRANK A. DOLAN, City Clerk.

SCHEDULE B.

AN ORDINANCE to regulate the distribution of newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets.

The Board of Commissioners of the Mayor and Aldermen of Jersey City do ordain:

1. No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card or pamphlet.

2. No person shall distribute or cause to be distributed to the occupants of any house, place or cause to be placed into any areaway, in front of, or along the side of any house, or upon the doorstep thereof any newspaper, paper, periodical, book, magazine, circular, card or pamphlet, unless the same has been previously ordered by the person in actual

occupation of the house, in the areaway of which, in front of which, or along the side or doorstep of which said newspaper, paper, periodical, book, magazine, circular, card of pamphlet shall be distributed or placed.

3. Any person violating or causing to be violated, or consenting to, or permitting the violation of any of the provisions of this ordinance shall, upon conviction thereof, be liable or subject to a fine of not exceeding Ten ($10.00) Dollars, or imprisonment for a period of not exceeding ten (10) days in the city prison or the county jail, in accordance with the statutes in such cases made and provided, or both, for the first offense, and a fine of Twenty-five ($25.00) Dollars or imprisonment not exceeding thirty (30) days, or both, for each and every subsequent offense.

4. Any complaint regarding the violation of any of the provisions of this ordinance shall be cognizable before the Police Courts of this City.

5. This ordinance shall take effect immediately.

MICHAEL I. FAGEN,
WM. B. QUINN,
JOHN SAUL,
A. HARRY MOORE,
FRANK HAGUE,
Commissioners.

Passed: January 22, 1924

EDWARD J. HOLLAND,
City Clerk.

SCHEDULE C.

TO ALL WORKERS IN HUDSON COUNTY

Millions of workers all over the United States, with the help of the C. I. O., have ended their economic slavery and become free men and women again.

You Can Do It, Too!

Here at last is the great chance for every worker in Hudson County—the biggest opportunity in your lifetime—the opportunity to organize for better wages, for security of your job, and for better life under the protection of a C. I. O. contract.

Don't forget! Your boss CANNOT PREVENT you from joining the C. I. O.

You Cannot Be Fired!

for joining a union. You have the legal right under the Wagner Labor Act, upheld by the Supreme Court of the United States, to choose your own labor union to represent you in collective bargaining.

ARE YOU—Satisfied with Low Wages
Contented with Long Hours ?
Working without Paid Vacations
Now IS THE TIME TO ACT!

Do You Want shorter hours, more pay, better working conditions and paid vacations ?

BE WISE—ORGANIZE! JOIN THE C. I. O.

Come to this Meeting and Find Out How
Friday, December 3—8 P. M.
People's Center
160 Mercer Street, Jersey City, N. J.

Nationally Known Speakers:

Michael Quill
President of the Transport Workers Union

Allan Haywood
C. I. O. Director for New York

Harry Wendrich
Representative, Printing Pressmen's Union

William J. Carney
C. I. O. Director for New Jersey

ADMISSION FREE!

SCHEDULE D.

CITY OF JERSEY CITY
Law Department
Jersey City, N. J.

December 20, 1937.

Mr. William J. Carney,
17 William Street,
Newark, New Jersey.

Dear Sir:

The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City, with or without the consent of the municipal authorities. You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City, with or without consent or permit from the City administration.

Assuming you have been correctly quoted and that your intention is such as stated, I deem it advisable to direct your attention to the law of the State and to certain ordinances of the City, relating to the actions and conduct you contemplate carrying out.

On January 22, 1924, the Board of Commissioners of the Mayor and Aldermen of Jersey City passed an ordinance, entitled:

"An Ordinance to regulate the distribution of Newspapers, papers, periodicals, books, magazines, circulars, cards and pamphlets."

Section 1 of that ordinance reads:

"No person shall distribute or cause to be distributed or strewn about any street or public place any newspapers, papers, periodicals, books, magazines, circulars, cards of pamphlets."

This ordinance is still in force and any complaint regarding the violation of the provisions I have quoted or of any other provision of the ordinance, is cognizable before the

Police Courts of the City. The ordinance provides a penalty upon conviction, for any person violating the ordinance or causing it to be violated or consenting thereto, or permitting the violation of any of the provisions thereof. The penalty is a fine of not exceeding ten dollars or imprisonment for a period not exceeding ten days in the City Prison or in the County Jail, in accordance with the statutes in such cases made and provided, or both, for the first offense and a fine of twenty-five dollars or imprisonment not exceeding thirty days or both for each and every subsequent offense.

On the subject of public parades or public assembly, I call your attention to an ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. It is entitled:

SCHEDULE E.

Public Notice

An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage.

The Board of Commissioners of Jersey City Do Ordain:

1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said applica-

tion, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both.

5. This ordinance shall take effect upon its final passage.

Introduced April 1st, 1930
Adopted April 15th, 1930

JOHN BEGGANS
MICHAEL I. FAGEN
ARTHUR POTTERTON
WILLIAM B. QUINN
FRANK HAGUE.
Commissioners

Dated, City Clerk's Office
Jersey City, April 21st, 1930
EDWARD J. HOLLAND, City Clerk.

SCHEDULE F.

24 Commerce Street
0161
December 17th, 1937

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey

Dear Director Casey:—

I have been instructed by my client, The American Civil Liberties Union, to make application for a permit on behalf of my client, for the purpose of holding an open air public assembly in the City of Jersey City. I herewith make ap-

plication accordingly. Said open air public assembly will be conducted under the auspices of the American Civil Liberties Union and the general public will be invited thereto. Various prominent speakers will address the public attending said meeting on the subject of civil liberties. The American Civil Liberties Union desires to obtain said permit for said meeting for any one of the following evenings, namely, Monday, December 20th, 1937, Tuesday, December 21st, 1937, Wednesday, December 22nd, 1937 or Thursday, December 23rd, 1937. Said meeting will commence at 8:00 P. M. in the evening and will end at about 10:30 p. m. in the evening.

It is the desire of the American Civil Liberties Union to conduct said meeting on the steps and plaza in front of the Court House located in Jersey City. If the steps and plaza in front of the Court House are not available on any one of the evenings aforementioned, for the purpose of said meeting, then it is agreeable to the American Civil Liberties Union to conduct the meeting in any public park or in any public plaza whatsoever which you may designate in the City of Jersey City.

Will you kindly, therefore, issue a permit to the American Civil Liberties Union for such an open air public assembly, to be conducted on any one of the evenings aforementioned, in any one of the public places aforementioned.

This application is made in accordance with the provisions of "An Ordinance to preserve public peace and good order, and to prevent riots, disturbances and disorderly assemblage", which ordinance was introduced April 1st, 1930 and which was adopted April 15th, 1930 by the Board of Commissioners of Jersey City. Please advise me if anything further is required and of your decision on this application.

Very truly yours,

SAMUEL L. ROTHBARD
On Behalf of the AMERICAN
CIVIL LIBERTIES UNION

SLR:BN

DEPARTMENT OF PUBLIC SAFETY
CITY HALL
JERSEY CITY, N. J.

DANIEL CASEY,
Director
WALTER M. DALY
Secretary to the Director

EDWARD A. FLAHERTY
Deputy Director
THOMAS H. HOPKINS
Secretary to the
Deputy Director

December 20, 1937

Mr. Samuel L. Rothbard
Law Offices
24 Commerce Street
Newark, New Jersey

Dear Sir:

I acknowledge receipt of your letter of the 17th instant, in which you make application for a permit to hold open air public assembly in the City of Jersey City. You inform me that this application is made on behalf of your client, the American Civil Liberties Union. You desire to obtain the permit for any one of the following evenings, namely: Monday, December 20th, 1937; Tuesday, December 21, 1937; Wednesday, December 22, 1937, or Thursday, December 23, 1937. The meeting, according to your statement, is to commence at 8.00 o'clock and end at about 10.00 o'clock in the evening. It is, as you state, the desire of your client to conduct the meeting on the steps and plaza of the Court House in Jersey City, or in any public park, or in any public plaza in Jersey City.

Your application comes under the provisions of an Ordinance adopted April 15, 1930, by the Board of Commissioners of Jersey City. This Ordinance is entitled: "An Ordinance to preserve public peace and good order and to

prevent riots, disturbances and disorderly assemblages." I enclose a copy of it herewith for your information.

The Ordinance imposes upon me, as Director of Public Safety, the duty of investigating all of the facts and circumstances pertinent to the application you make, to enable me to determine whether to grant or refuse the permit applied for.

Will you please, therefore, let me know what is the purpose of the meeting for which your client desires a permit, and who are the persons who will address the meeting.

I am,

Very truly yours,
DANIEL CASEY
Director

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24 Commerce Street,
December 20th, 1937.

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Director Casey:

I called at your office this morning at 11:30 a. m., as you requested, in order to obtain your decision with regard to the application which I made on behalf of the American Civil Liberties Union for a permit to hold a public assembly in a public place in Jersey City. Lieutenant Daly handed me your letter addressed to me, dated December 20th, 1937, in which you asked me to advise you what is the purpose of the meeting and who are the persons who will address the meeting. In my letter of application, dated December 17th, I advised you that the purpose of the meeting was to discuss Civil Liberties, and that various prominent speakers would address the public on that subject. Since you seem to desire more particulars concerning the nature of the meeting, please be advised that the purpose of the meeting

is to petition the Mayor and other responsible officials for the exercise of the rights of free speech, free press and other civil liberties. More particularly also, the speakers will be Congressman Maverick, Congressman Jerry O'Connel, Congressman Allen and Morris L. Ernst. When I was handed your letter this morning by Lieutenant Daly, I asked Lieutenant Daly whether I could see you personally so that I could give you this additional information. Lieutenant Daly advised me that it would not be possible for me to see you personally today. He did say that I could probably see you personally tomorrow at 11:30 a. m. in the morning.

In my letter of application dated December 17th, I informed you that it was desired to hold this meeting on any of the following evenings, namely, Monday, December 20th, 1938, Tuesday, December 21st, 1938, Wednesday, December 22nd, 1938, or Thursday, December 23rd, 1938. Because of the delay in obtaining the permit, it now becomes impossible to hold the meeting on any one of those evenings and it will be necessary to postpone same to the following week. Any evening except Friday evening next week, which you will designate for said meeting, will be agreeable. Also because of the delay in obtaining the permit for the meeting, it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. In that event, sufficient advance notice thereof will be given by you.

Will you kindly advise me as quickly as possible, whether the permit applied for will be issued by you, and will you also kindly advise me what evening next week will be agreeable to you for said meeting, and will you also kindly advise me whether the meeting may be held on the steps and plaza in front of the Court House or, if this place is not available, will you kindly designate any public park or any public plaza in the City of Jersey City for said purpose.

Awaiting your advices, I am

Very truly yours,

SLR:BN

SAMUEL L. ROTHBARD

DEPARTMENT OF PUBLIC SAFETY
CITY HALL
JERSEY CITY, N. J.

DANIEL CASEY
Director
WALTER M. DALY
Secretary to the Director

EDWARD A. FLAHERTY
Deputy Director
THOMAS H. HOPKINS
Secretary to the
Deputy Director

December 22, 1937.

Samuel L Rothbard, Esq.,
24 Commerce Street,
Newark, New Jersey.

Dear Sir:

I acknowledge receipt of your letter of the 20th inst. in answer to my letter to you of even date, requesting you to furnish me certain information regarding an application you, by letter dated December 17, 1937 made on behalf of the American Civil Liberties Union for a permit to hold an open air public assembly on the steps and plaza in front of the Court House, located in Jersey City, or in case the steps and plaza in front of the Court House are not available then for a permit to conduct a meeting in any public park or in any public plaza whatsoever, which I may designate in the City of Jersey City.

In my letter to you of December 20th, 1937, I requested you to let me know what is the purpose of the meeting and who are the speakers who will address the meeting. You informed me by the letter hereby answered that the purpose of the meeting is to petition the Mayor and other responsible officials for the expression of free speech, free press and other civil liberties. Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated.

You further inform me that on account of the delay in obtaining the permit it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. Will you please let me know who is the substitute speaker or who are the substitute speakers whom you intend to have take the place of the speakers mentioned in your letter.

I acknowledge receipt by registered mail this morning of your undated letter referring to your application for the permit above mentioned. I note your statement which reads: "Of course you realize that I intended to say in each instance *1937* instead of *1938*." I commend you for your accuracy and regret that the delay in this matter has been due to your evident evasiveness and unwillingness to answer the inquiries I submitted to you.

Very truly yours,

DANIEL CASEY
Director

December 23, 1937.

Hon. Daniel J. Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Sir:

The Hudson County Organizing Committee of the C. I. O. desires to hold an open air meeting in Jersey City, at any public place within a reasonable distance from the center of the city which you may assign for such meeting. James A. Hamill, Esq., your corporation counsel, has ruled that a permit is required for such meetings under an ordinance of Jersey City, and this application for a permit is therefore addressed to you.

The purpose of the meeting, to which the public will be invited, is to petition the Board of Commissioners of Jer-

sey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings, and to take appropriate action against intimidation by certain officers of your city of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee.

The permit is requested for the evenings, between 8 and 10 p. m., of either Wednesday, December 29, or Thursday, December 30, 1937.

The meeting will be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler.

I would appreciate receiving the permit by return mail since, as you understand, it will require several days advance notice properly to complete arrangements for the meeting.

Very truly yours,

SPAULDING FRAZER

DEPARTMENT OF PUBLIC SAFETY

City Hall

Jersey City, New Jersey.

December 27, 1937

Mr. Spaulding Frazer,
Counsellor at Law
744 Broad Street
Newark, New Jersey

Dear Sir:

I am in receipt this morning, December 27th, of your letter requesting a permit to hold an open air meeting for the evenings, between 8.00 and 10.00 p. m., of either Wednesday, December 29th, or Thursday, December 30th, 1937, the meeting to be held in Jersey City at any public place within

a reasonable distance from the center of the City which I may assign for such meeting.

I shall, as required by ordinance, make prompt investigation of all of the facts and circumstances pertinent to your application to hold this meeting before deciding whether it shall be proper for me to refuse or grant the issuance of a permit therefor..

I am,

Very truly yours,

Daniel Casey
Director

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24 Commerce Street
0885
December 28th, 1937.

Hon. Daniel Casey,
Director of Public Safety,
City Hall,
Jersey City, New Jersey.

Dear Director Casey:—

I herewith acknowledge receipt of your letter of December 22nd, 1937.

I have taken up with my client, the American Civil Liberties Union, the subject matter of your letter, and after discussion with my client, herewith desire to give you the following further information.

My client informs me that at this time, it feels no need of taking issue with you and debating with you through correspondence, whether or not any rights and civil liberties have been "infringed, restricted or violated" in the City of Jersey City. It is the opinion of my client that it conceives it has the right to express its opinion with reference to the violations of rights and civil liberties at a public meeting in Jersey City and to request persons at such a meeting to join with it in whatever action the meeting may decide to

take, by way of petition to the Mayor and the other city officials of Jersey City. If, at such a meeting, such a petition materializes, upon the presentation of that petition to the city authorities it would then be proper to discuss with the city officials the matters of fact alluded to in the petition with respect to violations of civil liberties.

My client, in making its application to you for a permit to conduct a meeting, is mindful of and asks you to bear in mind that portion of the New Jersey State Constitution which states that every person "Shall have the right to freely publish and declare his sentiments on all subjects." Of course, you are aware of the other constitutional provisions which allow people to assemble peacefully for the purpose of petitioning for redress of grievances. We further would like to call your attention to the able statement rendered by Justice Kalisch on behalf of the New Jersey Supreme Court in the case of State vs. Butterworth, (104 N. J. L. 43, 139 At. 161) in which the late learned Justice said, "the right of the people to meet in public places to discuss in open and public manner all questions affecting their substantial welfare, and to vent their grievances, to protect against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end, were rights confirmed and guaranteed them by the Magna Charta, Petition of Right and the Bill of Rights, the mainstay of the British Constitution, and the bases of both our federal and state Constitutions." Surely such free expression as is allowed by our law does not contemplate or authorize a prior police censorship of the matter intended to be discussed at the meeting. My client is aware that it will be liable for any abuse of its rights. It asks me, however, to give you the assurance that the assembly will be entirely lawful in respect to the subject matter of the discussion and the manner in which it is conducted.

My client further informs me that with reference to the persons scheduled to speak at said meeting, upon rechecking, it finds that there will be no need for any substitute

speakers. The speakers who will address said meeting will be those mentioned in my letter of December 20th to you, namely, Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst. However, may I call your attention that there is no warrant in law for any declaration in advance to police authorities as to the names of the persons who are scheduled to address a meeting. You will, of course, admit that the identity of the person makes no difference. It is the subject matter alone which may be subject to scrutiny, to see if it contains any matter prohibited by law.

I cannot agree with you that I have been, in any way, evasive or unwilling to answer any of your inquiries as suggested in your letter of December 22nd. Isn't the delay really due to your personal unwillingness to grant the permit in question? I again assure you that my client has been quite frank in this matter and intends to remain so. May I further advise you, at this time, that because of the delay so far, I would like the date for holding the meeting to be fixed some time in the week of January 3rd, and that you give me sufficient notice of your authorization so as to enable me to prepare for the same.

Any evening during the week commencing January 3rd, 193[illegible], which you will designate will be agreeable to my client for the time of said meeting. My client desires to conduct said meeting either on the steps and plaza in front of the Court House or on the steps and plaza in front of the City Hall, or in any public park, public plaza, public street or public place whatsoever which you may designate in the City of Jersey City. Will you, therefore, designate which evening next week and which public place the meeting may be held and grant the permit to my client for the same, with all possible dispatch.

Very truly yours,

SAMUEL L. ROTHBARD

SLR:BN
REGISTERED MAIL
RETURN RECEIPT REQUESTED

DEPARTMENT OF PUBLIC SAFETY
City Hall
Jersey City, N. J.

December 30, 1937.

Spaulding Frazer, Esq.,
744 Broad Street
Newark, New Jersey

Dear Sir:

I hereby answer your letter of December 23, 1937, addressed to me as Director of Public Safety, in which you make application for a permit to hold an open air meeting in Jersey City, which meeting will, according to you, be addressed by Congressman Jerry O'Connell, Roger N. Ba'dwin, William J. Carney, Al. Barkin, Sam Macri and John Kiesler.

On receipt of your letter, I sent you a communication, dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all of the facts and circumstances pertinent to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain Veterans' organizations of Jersey City, protesting against the granting of a permit to Roger N. Baldwin or to any members of the group he represents, to hold a meeting. The letter demanded that I withhold action on your application. I attach a copy of the Veterans' letter to this communication.

On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over three thousand persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of the permit. Violent disorder was threatened on the part of the veterans in case the meeting was held. Announcements were made from the floor—and these announcements had the approval of the meeting—

that if I should refuse to honor the Veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the Veterans at the meeting.

The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

The Central Labor body of Hudson County has gone on record against the granting of this permit.

Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage.

Therefore, I hereby refuse to issue the permit for an open air meeting requested by you in your letter of December 27, 1937, and my refusal is for the purpose of preventing riots, disturbances and disorderly assemblage.

Very truly yours,

Daniel Casey
Director

COMMITTEE OF VETERANS OF JERSEY CITY
921 BERGEN AVENUE
Jersey City, N. J. December 27, 1937

Hon. Daniel Casey,
Department of Public Safety,
Jersey City, N. J.

Dear Commissioner:

We understand from the newspapers that there is pending before you now an application for a permit to hold an open air public meeting in this City.

Among the speakers listed for the meeting is one Roger N. Baldwin, whose record was published in this afternoon's newspapers. In that record we find a conviction by a United States Court for draft dodging and a prison sentence of one year in the Essex County Penitentiary. We consider any man convicted of this crime to be thoroughly un-American in his principles and unworthy of receiving any consideration at the hands of the City Officials, at least to the extent of granting him permission to speak in this City at a public meeting.

We hereby protest against the granting of the permit to Roger N. Baldwin, or to any members of the Un-American group he represents, irrespective of what they claim to be the purpose of their meeting. We demand that you withhold action on this application.

The reason for requesting delay is that we wish to assemble in a body at the Jersey City Armory on Tuesday, tomorrow evening, in order that we may prepare and have adopted by the full membership of all the Veterans' organizations in Jersey City, resolutions of protest against allowing this "slacker", or any of his type, to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American Constitution.

Please give us a prompt answer to this letter.

Very truly yours,

CHARLES A. PETERSON
Past State Commander
V. F. W.

WILLIAM E. MALINKA
American Legion

GEORGE A. REILLY
Adjustant, Jersey City
Post A. L.

DAVID A. NIMMO
Past Commander, Hudson
County, Amer. Legion

LOUIS F. J. BORGERS
Commander, Quinn Post,
American Legion

HUGH A. KELLY
Commander, Jersey City
Post, Amer. Legion

WHEREAS, there is now pending before the Director of Public Safety of Jersey City, Daniel Casey, an application for an open air meeting, to be held in Jersey City, at which meeting one Roger N. Baldwin in scheduled to speak, and

WHEREAS, the said Roger N. Baldwin, on October 30, 1918, was convicted in the United States District Court for the Southern District of New York, before the Honorable Julius Mayer, United States District Court Judge, for draft dodging during the World War, and sentenced to a year in the Essex County Penitentiary, which sentence he served, and

WHEREAS, this same Roger N. Baldwin was also convicted on March 30, 1925, before Judge Delaney in the Passaic County Court of Special Sessions for "Unlawful Assemblage," by reason of his Communistic activities, and

WHEREAS, in his testimony before the Fish Congressional Committee he did testify that force, violence and murder may be resorted to for the overthrow of government, his testimony being as follows:

The Chairman: Does your organization uphold the right of a citizen or alien—it does not make any difference which—to advocate murder?

Mr. Baldwin: Yes.

The Chairman: Or assassination?

Mr. Baldwin: Yes.

The Chairman: Does your organization uphold the right of an American citizen to advocate force and violence for the overthrow of the Government?

Mr. Baldwin: Certainly, in so far as mere advocacy is concerned.

The Chairman: Does it uphold the right of an alien in this country to urge the overthrow and advo-

cate the overthrow of the government by force and violence?

Mr. Baldwin: Precisely on the same basis as any citizen.

The Chairman: You do uphold the right of an alien to advocate the overthrow of the government by force and violence?

Mr. Baldwin: Sure; certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited.

WHEREAS, the same Roger N. Baldwin is now the leading advocate of the C. I. O. movement; and

WHEREAS, the C. I. O., in permitting this man to be its spokesman stands accused of condoning his un-Americanism and Communistic leanings, and the C. I. O. should be condemned for its Un-American tactics, and

WHEREAS, the Veterans here assembled, including members of The American Legion, The Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars and United Spanish War Veterans, of Jersey City are of the unanimous opinion that the presence of Roger N. Baldwin and his Communistic associates upon a public platform in the streets of Jersey City would be an insult to them and will undoubtedly result in serious disorders which would be against the best interests of our city, and

WHEREAS, the Veterans of Jersey City have heretofore protested the granting of this permit for the purpose of permitting this man to speak upon the public streets of our City, and

WHEREAS, the Veterans of Jersey City have assembled, including members of The American Legion, The Veterans

of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish War Veterans, at a special meeting called for the purpose of determining what recommendation should be made to the Director of Public Safety in regard to the granting of this permit, Now, THEREFORE, BE IT

RESOLVED by the Veterans of Jersey City, including members of the American Legion, Veterans of Foreign Wars, Catholic War Veterans, Jewish War Veterans, Irish War Veterans, Polish-American War Veterans, Italian War Veterans, Disabled War Veterans, Reserve Officers Association, Marine Corps League, Veterans of Three Wars, United Spanish American War Veterans, that we do hereby oppose the granting of a permit which would permit the said Roger N. Baldwin and the persons with whom he is associated, all of whom are engaged in Communistic activities, to appear upon a public platform in the streets of our City, AND BE IT FURTHER

RESOLVED that we request the said Daniel Casey, Director of Public Safety, to refuse and deny the application made for such a permit, AND BE IT FURTHER

RESOLVED, that we now record our firm opposition and protest against allowing this slacker and his Communistic associates to appear publicly in Jersey City, whose citizens are devoted to American principles and the upholding of our American traditions, AND BE IT FURTHER

RESOLVED, that we consider a man convicted of the crime of evading the draft to be thoroughly Un-American in his principles and unworthy of receiving any consideration at the hands of public officials, especially the right to speak from a public platform in the streets of Jersey City, and that we also consider that any organization which permits

this man to be associated with them is also unworthy of any consideration on the part of public officials and that they should not be given the right to use our public streets for the purpose of spreading Communistic and Un-American doctrines, AND BE IT FURTHER

RESOLVED, that while the Veterans at this meeting assembled are in complete agreement with the right of any group of working men to organize for the purpose of obtaining decent, fair and reasonable wages and working conditions, we are utterly opposed to and hereby go on record as condemning the Communistic C. I. O. with its record of armed mobs, massed intimidation of peaceful workers, seizure of private property, defiance of courts, bloodshed and death to those who oppose its doctrines and that tactics so subversive of government by law places its agitators beyond the pale of the law's benefits and protection, AND BE IT FURTHER

RESOLVED, that our action in passing this set of resolutions is in complete accord and agreement with the Resolution passed by the American Legion at its National Convention in New York City in September, 1937, wherein they pledged continued opposition to Communism and to American citizens or aliens who advocate the overthrow of our government by force, fraud or violence.

I hereby certify this is a true copy of a Resolution passed at a meeting of Veterans held in the Jersey City Armory on Dec. 28, 1937.

HUGH A. KELLY,
Chairman.

January 3, 1938.

Honorable Daniel J. Casey,
Director of Public Safety,
Jersey City, New Jersey.

Dear Sir:

I wish to thank you for your very frank letter of December 30th. The fact that I received it the day after the last date for which permission was asked, was, as you doubtless thought, of no significance in view of your letter of December 27th, in which you informed us of your intended "investigation of all the facts and circumstances pertinent to" my application. With the passing of the meeting date, I had construed silence as dissent.

Your letter, however, is very illuminating as to the nature of the investigation undertaken by you. Such an investigation concededly takes time. Even a perfectly functioning organization requires at least one day to foment a mass-meeting. I congratulate you on the apparent success of the demonstration, if you consider the accomplishment important. I do not. It solves none of the problems confronting us, and as I see it, points with pride to the apparent inability of Jersey City authorities, with the largest per capita police force in the country at their disposal, to maintain order against the threatened mob violence of unruly elements who threaten direct action if the authorities protect, in the exercise of their constitutional rights, persons in whose opinions the mob does not concur.

The purpose of the proposed meeting was to petition your Commission (1) to modify certain city ordinances, and (2) to prevent owners of halls from intimidation by your police officers in the rental of their halls. That your supporters disagree with the opinions of Mr. Roger N. Baldwin, or the economic philosophy of the Committee for Industrial Organization seems beside the point. What seems, however, very important is that you, a public officer, sworn to enforce the law, should admit your incapacity to do so

and your fear that should you attempt it "veterans" would turn Jersey City over to the mercies of a riotous mob. Nowhere do I see any statement that the applying petitioners or their supporters will be disorderly, but it is clear from the voluminous matter attached to your letter in justification and from the reports of the "mass-meeting" that the disorderly conduct feared would have been on the part of your supporters. Really, Mr. Commi ioner, you should have them in better control. Your Mayor has recently spoken of his "efforts to obstruct this lawless element whose only effort is to crush by terrorism", and of a "campaign of violence and terrorism". Is it possible he had prophetically in mind the "mass-meeting" of Tuesday? Or is it that you tolerate mobs instructed to do your bidding and heroically suppress and oppress by public and private force all individuals who disagree with or oppose you? This, to my mind, is the issue involved, not what may be the opinions, philosophical or economic, of those who are brave enough in Jersey City to disagree with you, or shall I say more realistically, with Mayor Hague. On this issue I am ready to join with you.

Very truly yours,

Spaulding Frazer

SUBPŒNA AD RESPOND.

(Filed January 15, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,
FOR THE DISTRICT OF NEW JERSEY.

To FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH, Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY,

Defendants,

Greeting:

WE COMMAND YOU, that you appear in manner and form required by law in our District Court of the United States for the District of New Jersey, as a Court of Chancery, within twenty days from the date of service hereof upon you, to answer to a bill of complaint exhibited against you in our said court by Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union plaintiffs and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

WITNESS the Honorable William Clark, Judge of
(Seal) said court, this seventh day of January, 1938.

GEORGE T. CRANMER,
Clerk.
By E. T. PETTENGILL,
Deputy.

MEMORANDUM.

The defendant is to file his answer or other pleading in the suit, in the clerk's office, Trenton, N. J., on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

Served the within subpœna on Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey individually and as Director of Public Safety of Jersey City, Harry Walsh individually and as Chief of Police of Jersey City all personally and on the Board of Commissioners of Jersey City by delivering to and leaving with City Clerk Eugene Estle personally at Jersey City, all in the District of New Jersey on the eleventh day of January, 1938, at the same time showing each person the original with the seal of the Court attached and informing each person of its contents.

WM. P. MCDERMITT,
U. S. Marshal.
By JOHN A. KENNY,
Deputy.

NOTICE OF MOTION FOR BILL OF PARTICULARS.

(Filed January 29, 1938.)

To: Spaulding Frazer, Solicitor of Plaintiffs,
744 Broad Street, Newark, New Jersey.

SIR:

PLEASE TAKE NOTICE that on Monday, January 31, 1938, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I will move for an order for a bill of particulars based on the motion and affidavit of Joseph C. Glavin, true copies of which are hereby served upon you.

January 28, 1938.

JAMES A. HAMILL,
Solicitor of Defendants.

MOTION FOR BILL OF PARTICULARS.

(Filed January 29, 1938.)

Now comes Frank Hague, individually, and as Mayor of Jersey City, Daniel J. Casey, individually, and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, the defendants in the above-entitled cause, and move this Court, pursuant to provisions of Equity Rule No. 20, that the plaintiffs be ordered to furnish further and better particulars of the matters stated in the bill of complaint filed on the seventh day of January, 1938, in the following respects:

WITH RESPECT TO PARAGRAPH 8 OF THE BILL OF COMPLAINT:

1. For how long a period, prior to November 29, 1937, is it alleged that the defendants denied to the plaintiffs the right to hold any lawful meetings within the territorial limits of Jersey City, Hudson County, State of New Jersey?

2. On what dates and to which of the defendants were the applications for permits to hold such meetings made?

3. By whom, on behalf of the plaintiffs, were such applications for meetings made?

WITH RESPECT TO PARAGRAPH 9 OF THE BILL OF COMPLAINT:

1. Give the name of the parties to the alleged unlawful plan and conspiracy.

2. Give the name or names of the persons whom it is alleged informed owners of meeting halls in the City of Jersey City that a permit was required from the Chief of Police under the ordinance marked "Schedule A" before any meeting organized by said plaintiffs on behalf of the CIO could be held.

3. Give the names of the defendants alleged to have intimidated the owners of meeting halls against renting

such halls to said plaintiffs, or their representatives, as alleged in paragraph 9 of the bill of complaint.

4. Give the dates on which it is alleged such owners of meeting halls were intimidated.

5. Give the names of the owners of such meeting halls and the location of said meeting halls.

WITH RESPECT TO PARAGRAPH 10 OF THE BILL OF COMPLAINT:

1. Give the location of the meeting place or places which it is alleged the American Civil Liberties Union attempted to rent for the purpose of holding meetings and the dates upon which such attempts to rent were made.

2. State the name of the person on behalf of the American Civil Liberties Union who attempted to rent such meeting place or places.

WITH RESPECT TO PARAGRAPH 11 OF THE BILL OF COMPLAINT:

1. Give the dates on which it is alleged that the defendants and their subordinates physically interfered with picketing by any of the plaintiffs herein.

2. Give the names of the plaintiffs so interfered with.

WITH RESPECT TO PARAGRAPH 12 OF THE BILL OF COMPLAINT:

1. State the date or dates on which the defendants are alleged to have announced that the plaintiff, CIO, the other plaintiffs affiliated with the CIO, and all other persons affiliated with the CIO were forbidden to distribute circulars, leaflets or any other printed matter on the streets of Jersey City.

2. Give the name or names of the defendants alleged to have made such an announcement.

WITH RESPECT TO PARAGRAPH 14 OF THE BILL OF COMPLAINT:

1. Give the names of the persons known to be engaged in organized activities, on behalf of the CIO whom it is

alleged were physically interfered with by defendants, as stated in paragraph 14 of the bill of complaint.

2. Give the name or names of defendants alleged to have made such physical interference.

WITH RESPECT TO PARAGRAPH 18 OF THE BILL OF COMPLAINT:

1. On what dates, by whom, and in what manner were the plaintiffs prevented from "using the streets of the city in the same manner as others have been and are permitted to use them," as alleged in paragraph 18.

And the defendants further move that an order be entered that the plaintiffs file such particulars and serve upon the defendants, or their attorney, a copy of the same within ten days after the entry of said order.

Dated: January 28, 1938.

JAMES A. HAMILL,
Solicitor of Defendants.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } *ss.:*

JOSEPH C. GLAVIN, of full age, being duly sworn on his oath, according to law, deposes and says:

I am the attorney in charge of the within cause, on behalf of the defendants and have read the bill of complaint filed by the plaintiffs herein.

The particulars sought on the motion herein are necessary in order that the defendants may intelligently and properly plead, answer, or demur to the allegations in the said bill of complaint and for the further reason that without such particulars the defendants may be subject to surprise at the hearing of said cause.

JOSEPH C. GLAVIN.

Subscribed and sworn to before me, this twenty-eighth day of January, 1938.

JOHN J. EVANS,
Notary Public of N. J.

Service of a copy of within motion for bill of particulars is hereby acknowledged this twenty-eighth day of January, 1938.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

ORDER REQUIRING BILL OF PARTICULARS.

(Filed February 9, 1938.)

This cause came on to be heard at this term on the motion of the defendants herein, for an order directing plaintiffs to furnish further and better particulars on certain matters stated in the bill of complaint, supported by the affidavit of Joseph C. Glavin, verified the twenty-eighth day of January, 1938, and was argued by counsel and, thereupon, on consideration thereof, it was

ORDERED, ADJUDGED and DECREED, as follows:

1. The said motion be and same hereby is granted as to question 1, with respect to paragraph 10 of the bill of complaint and is denied with respect to all of the remaining questions.

It is further ORDERED, ADJUDGED and DECREED that the plaintiffs serve their answer to the foregoing question on the defendants, or their attorney, within five (5) days and that the defendants have five (5) days from and after service upon them or their attorney of the answer to the aforesaid question, to plead or answer to the bill of complaint filed herein.

WILLIAM CLARK,
Judge, United States District Court.

Dated February 9, 1938.

PROOF OF SERVICE.

(Filed February 17, 1938.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX } *ss.:*

JOSEPH M. JACOBS, of full age, being duly sworn according to law upon his oath, deposes and says:

I am an attorney at law of the State of New Jersey, and I am employed in the law offices of Spaulding Frazer, solicitor of plaintiffs in the above-entitled cause, and on February 14, 1938, at 3:15 P. M., I served the annexed bill of particulars upon James A. Hamill, Esq., solicitor of defendants, by leaving a copy with John J. Evans, Esq., the person then in charge of the office of James A. Hamill, City Hall, Jersey City, New Jersey.

JOSEPH M. JACOBS.

Sworn and subscribed to before me this fourteenth day of February, 1938.

CECILE HUEBNER,
(Seal) *A Notary Public of N. J.*

BILL OF PARTICULARS.

(Filed February 17, 1938.)

To James A. Hamill, Esq., Solicitor for Defendants:

The following is a bill of particulars, furnished in accordance with the directions of an order made herein by the Honorable William Clark, Judge of the United States District Court, on February 9, 1938, as to Question 1 with respect to paragraph 10 of the bill of complaint:

During December, 1937:

Young Men's Christian Association Hall, located at 654 Bergen Avenue.

Young Women's Christian Association Hall, located at 270 Fairmount Avenue.

Young Men's Hebrew Association Hall, located at 604 Bergen Avenue.

Methodist Church, located on Summit Avenue.

Lutheran Church, located on Hudson County Boulevard.

Methodist Episcopal Church, located on Magnolia Avenue.

Masonic Temple, located on Fairmount Avenue.

February 4-6, 1938:

White Eagle Hall, located at 335 Newark Avenue.

Peoples' Palace, located at 380 Bergen Avenue.

National Hall, located at 187 Brunswick Avenue.

Fairmount Hall.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

ANSWER OF FRANK HAGUE, Individually and as Mayor of Jersey City, DANIEL J. CASEY, Individually and as Director of Public Safety of Jersey City, HARRY WALSH Individually and as Chief of Police of Jersey City, and THE BOARD OF COMMISSIONERS OF JERSEY CITY, the Defendants to the Bill of Complaint Herein.

(Filed February 19, 1938.)

To the Honorable the Judges of the United States District Court for the District of New Jersey:

For answer to the bill of complaint of the plaintiffs in the above-entitled cause, Frank Hague, individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City, defendants above named say:

1. Answering the first paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

2. Answering the second paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

3. Answering the third paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

4. Answering the fourth paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief as to the allegations thereof, and therefore deny the same.

5. Answering the fifth paragraph of the bill of complaint, the defendants admit the allegations contained therein.

6. Answering the sixth paragraph of the bill of complaint, defendants deny the allegations thereof.

7. Answering the seventh paragraph of the bill of complaint, defendants deny the allegations thereof.

8. Answering paragraph eight of the bill of complaint, defendants deny the allegations contained therein and particularly deny the conclusions of law contained in the allegation "said plaintiffs charge that said ordinance is in violation of the Constitution of the United States on its face and as applied to said plaintiffs."

9. Answering the ninth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

10. Answering the tenth paragraph of the bill of complaint, defendants deny each and every allegation thereof.

11. Answering the eleventh paragraph of the bill of complaint, defendants deny each and every allegation thereof.

12. Answering the twelfth paragraph of the bill of complaint, defendants admit that there is an ordinance of the City of Jersey City, adopted January 22, 1934, regulating the distribution of leaflets, circulars and other printed matter upon the streets of Jersey City, and further admit that on or about November 29, 1937, the plaintiffs announced their intention to distribute circulars upon the streets of Jersey City, in violation of said ordinance and in defiance of the authorities of the City of Jersey City, and deny all of the remaining allegations thereof.

13. Answering the thirteenth paragraph of the bill of complaint, defendants admit that having been advised through the press and otherwise of the intention of plaintiffs to violate the ordinance referred to in paragraph 12

of the bill of complaint, and fearing serious disorder and riot, stationed policemen at the locations specified by the plaintiffs for the purpose of maintaining order and to prevent violation of the law, and further admit that the plaintiffs, or some of them, attempted to distribute circulars, contrary to the provisions of said ordinance and in other respects violated the laws of the State of New Jersey and, as a result, the individuals specified in the bill of complaint were arrested; and deny all of the remaining allegations thereof.

14. Answering the fourteenth paragraph of the bill of complaint, defendants deny each and every allegation thereof.

15. Answering the fifteenth paragraph of the bill of complaint, defendants admit the allegations thereof.

16. Answering the sixteenth paragraph of the bill of complaint, defendants admit that the plaintiff, American Civil Liberties Union (through its attorneys), applied for a permit under an ordinance of Jersey City, adopted April 15, 1930, for an open air public meeting and before defendants acted upon said application, the plaintiffs made a further application through a different attorney on December 23, 1937, for a permit for a similar meeting. Defendants further admit that this latter application was denied but deny that the refusal by defendants to hold the open air meeting was in violation of plaintiffs' rights and privileges as guaranteed by the Constitution of the United States, but was perfectly lawful under the ordinance referred to in the bill of complaint, a copy of which is attached thereto and marked Schedule "F"; and deny all of the remaining allegations thereof.

17. Answering the seventeenth paragraph of the bill of complaint, defendants have no knowledge or information sufficient to form a belief concerning the employment and duties of the individual plaintiffs, as alleged therein. As to the remaining allegations, such facts are immaterial to this cause and for that reason, defendants make no answer thereto.

18. Answering the eighteenth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

19. Answering the nineteenth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

20. Answering the twentieth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

21. Answering the twenty-first paragraph of the bill of complaint, defendants deny each and every allegation contained therein and further deny that the allegations of said bill of complaint present any Federal question.

22. Answering the twenty-second paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

23. Answering the twenty-third paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

24. Answering the twenty-fourth paragraph of the bill of complaint, defendants deny each and every allegation contained therein.

For a first, further, separate and distinct defense, defendants allege that the plaintiffs have an adequate, complete and speedy remedy at law for violation of their rights as alleged in the bill of complaint.

For a second, further, separate and distinct defense, to said complaint, defendants allege that the announcement by the plaintiffs of their invasion of the City of Jersey City, and subsequent carrying out of that announcement, involving violations of the law, were solely for the purpose of attempting to intimidate the police and authorities of the City of Jersey City and to create disorder, confusion and riot.

For a third, further, separate and distinct defense to the bill of complaint, defendants allege that the plaintiffs, by virtue of their own unlawful acts precluded themselves from the right to relief, if any existed, in a court of equity.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that the facts alleged in said bill of complaint are insufficient to constitute a valid cause of action in equity.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that the allegations in said bill of complaint stating that the several ordinances and statutes referred to therein are unconstitutional under the Constitution of the United States of America, are mere conclusion of law and, therefore, improperly pleaded.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants, Frank Hague, individually, Daniel J. Casey, individually, and Harry Walsh, individually, say that they are improperly joined as parties defendant in this suit.

For a further separate and distinct defense in point of law, arising upon the face of the bill of complaint herein, defendants say that the amount in controversy in this cause as to each plaintiff and against each defendant, does not exceed three thousand ($3000) dollars, exclusive of interest and costs.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that it is apparent from the face of said bill of complaint that the supposed grounds of jurisdiction of a Federal Court are frivolous, with no facts alleged sufficient to show or make it appear that any real or substantial Federal question is involved.

For a further separate and distinct defense in point of law arising upon the face of the bill of complaint herein,

defendants say that the only question of law involved is the alleged unconstitutionality of the several ordinances and statutes referred to in the bill of complaint and relied upon by the plaintiffs in support of their alleged constitutional rights which this Court will not assume jurisdiction to determine.

WHEREFORE, the defendants pray judgment that the bill of complaint of the plaintiffs be dismissed, with costs to the defendants.

Dated February 18, 1938.

JAMES A. HAMILL,
Solicitor for Defendants.

JOSEPH C. GLAVIN,
Of Counsel.

Service of a copy of the within answer is hereby acknowledged, this nineteenth day of February, 1938.

SPAULDING FRAZER,
Solicitor for Plaintiffs.

AMENDMENT BY WAY OF SUPPLEMENT.

(Filed June 10, 1938.)

Plaintiffs for their amendment to the bill of complaint herein by way of supplement respectfully show that:

After the filing of the bill of complaint herein defendants Frank Hague, Daniel J. Casey, Harry Walsh, the Board of Commissioners of Jersey City, and their employees, agents and servants continued, and are still continuing, against plaintiffs and others similarly situated, the practices, activities, plan and conspiracy referred to in paragraphs 8 to 20 inclusive of the original bill of complaint herein, in violation of the Constitution of the United States and the other statutes and laws referred to in said bill of complaint.

SPAULDING FRAZER,
Solicitor of Plaintiffs.

AFFIDAVIT OF MORRIS L. ERNST.

(Filed June 21, 1938.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } *ss.:*

MORRIS L. ERNST, being duly sworn, deposes and says:

I am an attorney at law duly admitted to practice in the courts of the State of New York. By the Court's leave, I have been associated of counsel with Mr. Spaulding Frazer, solicitor for the complainants, in the cause entitled *"Committee for Industrial Organization, et al. v. Frank Hague, et al.,"* now pending on trial in this court, and have actively participated in the trial of said cause.

This affidavit is submitted in support of a motion made by me in open court on June 17, 1938, and now renewed, to punish Frank Hague, one of the defendants in the cause and a witness therein called on behalf of the complainants, as and for a criminal contempt committed in the presence of the Court.

On June 10, 1938, Frank Hague took the witness stand. His direct examination was concluded on June 16, 1938. For the content of his testimony under direct examination the Court is respectfully referred to the record.

On June 17, 1938, Hague was taken in cross-examination by his counsel, Mr. John A. Matthews. During the course of said cross-examination, counsel proceeded to examine Hague by reference to various publications and newspaper articles which, according to Hague, he had read and considered and which had contributed to form his state of mind or mental attitude with respect to the complainants in the cause and others. The Court had ruled that such publications and articles could not be offered or referred to to prove the truth of the matters therein contained, but could be deemed pertinent and relevant solely as a means of showing Hague's state of mind.

The following question was then propounded to Hague by his counsel:

"Q. Now, Mr. Mayor, you made the statement in your testimony that the Communists were people who were trying to destroy the United States and destroy all religion. Have you any information about Senator McNaboe of New York, which together with that article which I show you now helped you to form that opinion which you gave to Mr. Frazer? A. I have. This covered school children."

This question and line of testimony were objected to by Mr. Spaulding Frazer on the ground (among others) that the newspaper article in question was dated June 10, 1938, and could not possibly have contributed *ante litem motam* to Hague's state of mind or mental attitude. While argument on the objection took place, Hague persisted in an attempt to give testimony. Finally the objection was sustained by the Court and Hague's remarks were ordered stricken out:

"The Court: Isn't it a fact that the McNaboe Committee made some report almost a year ago?

Mr. Matthews: They did not make any report. What the Mayor wants to say is that the McNaboe Committee organized—he wants to tell the Court what the situation was—I don't want to tell the Court his testimony, and it dealt with this proposition.

A. It dealt with school children, it dealt with that Morris Ernst stopped the investigation. The committee never met, the committee was never permitted to meet. I want to make the statement, I want to show the influence that the Communists has got in this country. I never heard of such a thing, that a committee can be silenced that is organized to investigate communism in the public school system and the institutions——

Mr. Frazer: If it please the Court, will you ask the witness to desist?

The Court: There is no evidence to that effect.

Mr. Frazer: Will you strike those remarks from the record, if it please the Court?

A. Do you mean to tell me I am not permitted to make a statement here concerning the prosecutor in this case?

Mr. Frazer: May I ask the Court that the witness do not make any more remarks and may I move that the remarks be stricken?

The Court: Yes.

Mr. Matthews: Do I understand that the Mayor is not to tell what the connection is between the children and the deprivation——

The Court: My ruling is that the newspaper article was published after the trial began. I therefore sustain the objection. You may have an exception."

After this exchange, the Court declared a luncheon recess. As Hague left the witness stand he gestured to various newspaper reporters present in court to accompany him to an adjacent room in the courthouse. When the reporters had assembled, Hague issued a statement substantially as follows (quoted from *The New York Times*, June 18, 1938, pp. 1 and 2):

"During the noon recess Mayor Hague called reporters into a room in back of the court and dictated a statement in which he said that the article Mr. Matthews had failed to get into the record was a clipping from a Boston newspaper 'concerning school children being forced into a Communist atmosphere.' Then he said that Senator John J. McNaboe of New York introduced a resolution in the New York Legislature last year which was unanimously adopted, and an appropriation made, providing for an investigation of 'Communist

and radical influences in the public schools of New York and public universities.'

'The committee never met, never selected a counsel, never spent one 5-cent piece of its appropriation,' the Mayor added. 'He was stopped by the influence of Morris Ernst from exposing conditions in the public schools. I say that when Communist leaders sway that type of influence the American people better be on guard. He (Mr. Ernst) is the master mind, going about the country telling about his influence.'"

It will be observed that the statement given to the press related specifically to the matters which the Court had ordered excluded and directed to be stricken out of the record. Moreover, it contained a grave charge reflecting upon Senator McNaboe and his colleagues on the committee of the New York State Senate, and a damaging, scurrilous and false attack upon me.

I was advised by reporters during the luncheon recess that Hague had made this statement, and upon being asked by reports what reply I desired to make, I said that I had no reply, as I preferred to try the case in court and not in the newspapers.

In my opinion, Hague's acts as hereinabove described constitute a criminal contempt of this Court. The statement issued by Hague was intended to and did receive nationwide publicity. It necessarily reached the attention of the Court. Thus Hague knowingly attempted to persuade the Court—it is unimportant whether he succeeded—by matters which the Court had specifically excluded from the cause as incompetent. The necessary purport of the statement was to embarrass and prejudice the fair conduct of the cause.

The motion to punish Hague for contempt was made by me upon the reconvening of Court after the luncheon recess as follows:

"Mr. Ernst: If your Honor please, I rise to move the Court on a matter of peculiar importance, and I

hereby move that you hold the witness Frank Hague in contempt of court for the following reasons and set of circumstances:

Evidence was excluded by your Honor in relation to one McNaboe. I was confronted a few minutes ago by members of the press who read to me what purported to be a statement which Frank Hague uttered to them in a conference called by him. The statement, if your Honor please, directed itself to the very facts which were denied admission in this case. But further, sir, that statement, as it was read to me by the members of the press at the conference, accused me, a member of the bar, of having wrecked a Senatorial investigation committee in the State of New York, of having been responsible for calling it off.

That means, if your Honor please, that I, not a member of the legislature, was instrumental, and it could only have been by nefarious means, in calling off all of the members, or a majority thereof, of a legislative committee of the State of New York.

Now, I am not concerned with the resentment that they may feel at the statement, but this is just the last step in a campaign of not trying this case in court.

May I add, your Honor, that the members of the press asked me if I wished to comment on the statement. I told them that I did, and I told them that our comment was that we were trying this case in a court of law and that our statements would be produced through witnesses on the stand before your Honor.

That statement of this witness at the conference which he called has been circulated to the press. We have a similar case on the same point of law now pending in the courts of the State of New York. I do not ask your Honor to pass on this contempt motion at this moment, I wish to brief the matter for you, and I refer you at this moment to a case now pending before Referee John Kirkland Clark, sitting by appointment

of a Judge of the Supreme Court of the State of New York, where it is charged by one of the attorneys before him that statements were issued by the other attorney or by the parties, I do not recall which, circulated in print, and that motion is now pending in that case. I therefore charge that contempt has been committed. I move that you hold the witness for contempt and I ask the opportunity of supplying a brief to you by Tuesday of next week.

The Court: I suppose you should file something in the form of affidavits or otherwise.

Mr. Ernst: I have this situation——

The Court: With the motion papers.

Mr. Ernst: May I call this to your attention: I do not know the law in the State of New Jersey with regard to the extent of the privilege of a reporter; it will be my affidavit that they read me the statement.

The Court: There is a Federal provision, I think, about contempt of court in Federal cour' Section 268 of the Code, not the United States Code Annotated, the Judicial Code, which covers contempt in criminal courts. My recollection with respect to witnesses or attorneys is that if they make any statement it has to be an attempt to influence the Court, I mean that is my recollection of the law, but I haven't looked it up recently.

Mr. Ernst: That may be a secondary question to which the cases, as I recall it, direct themselves, because that goes to the question of motive and the motive might have only been to put something in print in the newspapers, so that when the witness reads it again it can be claimed that he made up his mind on the strength of what he read in the newspapers.

Mr. Matthews: I object to that statement. I don't know anything about this that Mr. Ernst is informed about.

Mr. Ernst: May I say that I am informed that none of the counsel for the witness were present at the conference. I overlooked it.

Mr. Matthews: As far as reading it or anything of that sort, I think the Mayor can tell about it if he has had any conference.

The Witness: Am I permitted to answer?

The Court: Mayor Hague, you can answer the affidavits if they are filed.

The Witness: If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court.

Mr. Matthews: I know nothing about it.

A. It was a very important statement, your Honor, to the country. I felt that the Communists, to silence a committee that sets itself up to investigate Communism in public schools of the State of New York, and that they was silenced by that man, as I charge it, then I say it is a serious question for the country to know that the Communists can sway that type of influence.

The Court: You will file the memorandum.

. . . . . .

Mr. Ernst: Would you let me examine you on your statement that I caused a legislative committee of the State of New York not to do its duty?

The Witness: You are going to examine me. You will have a chance to examine me, and I am not afraid of you; you must understand that.

Mr. Ernst: All right. I will do it in due time.

The Witness: I have no fear when I am taking the side of the American people."

This Court may judge of the sincerity of Hague's assertion that "If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court." The Court may judge whether, under all the circumstances in the case, such an apology is sufficient to purge the defendant Hague's contempt.

All of which is respectfully submitted.

MORRIS L. ERNST.

Sworn to before me this twenty-first day of June, 1938.

JOSEPH M. JACOBS,
An Attorney at Law of New Jersey.

AMENDMENT TO DEFENDANTS' ANSWER.

(Filed June 23, 1938.)

The defendants hereby amend the answer heretofore filed by them in the hereinabove entitled matter by adding the following paragraphs to the said answer:

Defendants further answering say that their refusal to issue the permits for public meetings on the public streets, highways and property in Jersey City was in the proper exercise of the powers vested in them by the ordinances of Jersey City and the laws of the State of New Jersey; that said permits were denied after an investigation of all the facts and circumstances pertinent to said applications and in order to prevent riots, disturbances and disorderly assemblage; that the citizens of Jersey City, aroused by reason of the communistic and radical activity of the persons who or organizations which made the applications for the permits which were denied, protested against the issuance of the same, and realizing that to grant the permits would inevitably lead to riots, disturbances and disor-

derly assemblage, the defendants were justified in denying and were under a duty to deny the said permits; and that said defendants were obliged to consider the hostile attitude of its citizens towards communists and radicals whose purposes, aims and ideals are contrary to and subversive of American institutions and traditions and of the American form of government.

Defendants further answering say that the constitutionality of the ordinance under which the defendants acted and the validity of the action thereunder is now being reviewed by the New Jersey Supreme Court in mandamus proceedings brought by Norman Thomas, whose application for a public meeting on the public streets of Jersey City was denied, which Court has complete jurisdiction to determine the said questions involved and this Court should not take jurisdiction of the same subject matter especially by reason of the fact that the plaintiffs have a complete and adequate remedy in the law courts of this State wherein said action is now pending.

JAMES A. HAMILL,
Solicitor for Defendants.

FURTHER AMENDMENT TO DEFENDANTS' ANSWER.

(Filed August 1, 1938.)

The defendants hereby further amend the answer heretofore filed by them in the hereinabove-entitled matter by adding the following paragraph to said answer:

Defendants further answering say that this Court should not grant the plaintiffs the equitable relief prayed for because they come into this court with unclean hands in that instead of resorting to the orderly processes of the law in challenging the validity or constitutionality of the ordinances of the City of Jersey City, the said plaintiffs took the law into their own hands; they disregarded the said ordinances and violated the same causing disorder in the community and created a situation fraught with grave danger, unrest and damage to its citizens and their property.

JAMES A. HAMILL,
Attorney for Defendants.

OPINION.

(Filed October 27, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,

Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and The Board of Commissioners of Jersey City.

Defendants.

Appearances:

SPAULDING FRAZER, ESQ., attorney for plaintiffs; DAVID STOFFER, ESQ., of the New Jersey Bar, MORRIS L. ERNST, ESQ., LEE PRESSMAN, ESQ., BENJAMIN KAPLAN, ESQ., HARRIET F. PILPEL, ESQ., of the New York Bar, of counsel.

JAMES A. HAMILL, ESQ., attorney for defendants; JOHN A. MATTHEWS, ESQ., CHARLES HERSHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., CHARLES A. ROONEY, ESQ., of counsel.

CLARK, *D. J.*

This case seeks the solution of a problem inevitable and inherent in a democratic form of government. Upon its sound solution the preservation of that form of government

may well be said to depend. For that reason we repeat the hope, expressed at the trial, that this opinion will prove only an indistinct sign-post on the road to the ultimate wisdom of the highest tribunal. We spoke of seeking a solution advisedly. We are going to assume, or should we say presume, that both parties to the litigation are convinced that their opposing points of view are in the interest of that democracy we are sure both believe in. Any contrary assumption, or presumption, depends for its validity upon phychological factors difficult of determination and of no help in arriving at a conclusion. So we disregard the spasmodic spirit evinced by such respective trial amenities as "tinpot Hitler" and "busybodies" (as the merchant said of the fire engines). As in many matters of political science there exists a necessity for balance and a consequent inability to agree as to the proper adjustment of the scales. The committee which prepared the learned and interesting discussions in anticipation of the recently held convention for revision of the New York Constitution puts it thus:

> "Quite apart from the previous considerations, there is an inherent difficulty in defining the proper scope of freedom to speak, to publish and to assemble. The difficulty arises from the fact that speech, publication and assembly of some sorts, occurring under some circumstances may lead to undesirable consequences. These consequences may be sufficiently undesirable and the probability that they will occur sufficiently high to justify action by the State which is addressed to preventing the speech, publication or assembly which creates such danger."
>
> p. 151.
>
> . . . "The difficulty lies in the multiple variations that may occur between the extremes."
>
> p. 152.
>
> Problems Relating to Bill of Rights and General Welfare, New York State Constitutional Convention Committee, Vol. 6.

and similarly Professor Chafee, *Freedom of Speech* and Eliel *Freedom of Speech During and Since the Civil War*, 18 American Political Science Review, p. 712

> "The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for, as Bagehot points out, once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom."
>
> Chafee, p. 34.
>
> "There is also a social interest in free speech as a guaranty of political efficiency and an instrument of progress; and this social . . . Another doctrine for the interpretation of the use abuse theory is the test of clear and immediate danger, in determining which is suggested, not only the words uttered, but the situation in which they are uttered must be considered. . . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command."
>
> Eliel, p. 734-735.

We think the mere statement of the question acquits our opening sentences of pompousness or exaggeration. The City of Jersey City, through its appropriate elective officials the Mayor and Commissioner of Public Safety, has adopted a deliberate policy. It has not been necessary to seek for

proof of that policy in the usual unsatisfactory process of weighing the conflicting testimony of witnesses or in the even more unsatisfactory study of counsel's conflicting interpretations of that testimony. In fact, the only exception to this pleasant posture of the litigation lies in the rather unsuccessful attempts of counsel to cut the cloth of some of that testimony to their conception of the law. We say this with a full appreciation of the difficulty inherent in reconciling the views of a positive city official with the pronouncements of a powerful Supreme Court.

That deliberate policy of Jersey City is this. Certain individuals and groups of individuals (whether incorporated or not), the plaintiffs in this case, are alleged to be the kind of persons and to hold the kind of opinions to which the people of Jersey City or a majority of them are, to use a current and expressive medical term—allergic. In the practice of preventive medicine, so to speak, these individuals and groups are not permitted to come in contact with the body (politic) in which they produce the undesirable symptoms of "riot, disturbance and disorderly assemblage" (the words of the contested ordinance). In two particulars this medical metaphor breaks down. The effect of mustard, let us say, upon the human body lies in the field of physiology, an exact science, and is certain. Mustard is not protected by the Constitution. The effect of opinion upon the human mind lies in the field of psychology, not an exact science, and is not certain. Opinion is protected by the Constitution. That breakdown or difference precludes the accurate answer implicit in all exact science and requires the writing of this opinion.

An analysis of the prescription of Drs. Hague (the Mayor) and Casey (the Commissioner of Public Safety) indicates five ingredients (not necessarily in equal parts for one at least telescopes the rest). The individuals or groups diagnosed as giving rise to the alarming symptoms aforesaid are not allowed to (1) be in Jersey City, (2) express their opinions in Jersey City either to (a) those who signify

their willingness to receive them by (1) accepting circulars or (2) going to privately owned meeting places or (b) those who receive them involuntarily (1) in the form of speeches made in public places or (2) placards displayed on public streets.

To turn from medicine to law. The City of Jersey City has prevented these plaintiffs, both singly and in groups, from being, moving about, and communicating their thoughts within the city limits. Do they have legally enforceable rights corresponding to these human powers? If they have such rights, what is their extent? Has the action of the defendants impinged upon that extent? Since this democracy happens to be cast in the Federal mold, our answer to these questions must be sought in some clause or clauses of a written constitution.

That there are such corresponding rights and, of course, their complimentary liberties is conceded. So in nearly all modern legal systems we find a right (or liberty) of locomotion (movement) of free speech (and press) and of free assembly. Whether these liberties should be called natural or civil has been the subject of theoretical discussion. Professor Lieber in his book entitled *Civil Liberty and Self-Government* gives us this definiation:

> "Civil liberty is the idea of liberty in connection with politics, and must necessarily partake of the character of, or intertwine itself with, the whole system of politics of a given nation."
>
> The Meaning of Civil Liberty, Chapter 3, p. 42.

The matter seems rather one of scholarly description than of constitutional significance and we may, therefore, agree with Ambassador Bryce that it is:

> "Enough to say that although the conception of Individual Liberty may be made to include the exemptions our ancestors contended for in the seventeenth century, and though every kind of individual liberty may be called a Civil Liberty, there is this significant

> difference that the Civil liberties of those older days were extorted from arbitrary monarchs, whereas what we call Individual Liberty today has to be defended, when and so far as it needs defence, against the constitutional action of a self-governing community."
>
> Modern Democracies, p. 63.

and see also, *Modern Political Constitutions, Strong,* p. 34; *Our Ineffective State,* Hessler, p. 21; *The Story of Civil Liberty in the United States,* Whipple; *Political Theories from Rousseau to Spencer,* Dunning, p. 118.

As our particular legal system depends upon a rigid constitution, we are faced at once with its Pythias, interpretation. Mr. Justice Story pointed with pride to the fact that constitutions spoke in general terms quoting Chief Justice Marshall in the case of *Martin v. Hunter,* 1 Wheaton, 304, 326:

> "The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications . . .."
>
> Story's Commentaries, Vol. 1, 5th Edition, p. 323.

Any examination of Federal constitutions generally demonstrates that their particularity increases in inverse proportion to their age. *Real Democracy in Operation,* Felix Bonjour (Swiss); *Canada's Federal System,* A. H. F. Lefroy; *The Law of the Australian Constitution,* Donald Kerr; *The Law and Custom of the South African Constitution,* Kennedy and Schlosberg; *Government of India Act,* 1935, 26 Geo. 5, Ch. 2; *Federations, A Study in Comparative Politics,* D. G. Karve; *India, A Federation,* Sir Frederick Whyte, K.C.S.I.; *La Constitution de la Republique Argentine,* E. Rouys, *American Constitutions,* A compilation of the *Political Constitutions of the Independent Nations of the New World,* Rodriquez (International Bureau of the Amer-

ican Republics, Vol. 2, July 1905). The historical fact seems to be that Mr. Justice Story's vaunted vagueness was due rather to a distrust for any constitution than to a scientific preference for indefiniteness. Whatever the merits of the two schools of constitutional draftsmanship it is plain that the learned Justice places a greater burden, or should we say benefit, of governance upon the interpreting agency.

The constitutional provisions here applicable are contained in the First and Fourteenth Amendments and the pertinent words are liberty, due process and free as applied to speech and assembly. Can one conceive of words more flexible in content and in more complete fulfillment of Mr. Justice Story's ideal? Their very pliability is in fact the reason for our current capacity. The Supreme Court has recently adopted the dissent of Mr. Justice Harlan in *Patterson v. Colorado,* 205 U. S. 454 and has declared that freedom of speech and assembly come within the meaning of liberty as used in the Fourteenth Amendment. *Gitlow v. New York,* 268 U. S. 652, *Whitney v. California,* 274 U. S. 357, *Burns v. U. S.,* 274 U. S. 328, *Stromberg v. California,* 283 U. S. 359, *Near v. Minnesota,* 283 U. S. 697, *Grosjean v. American Press Co.,* 297 U. S. 233, and are therefore protected against action by the states (or their agencies as here). This is a direct reversal of a doctrine expounded in the cases from *Barron v. Baltimore,* 7 Peters 243 (1833) where Chief Justice Marshall referred to the "extraordinary occupation of improving the constitutions of the several states" to *Prudential Insurance Co. v. Cheek,* 259 U. S. 530 (1922). It is not our place to comment and much less to criticize. Those who are interested are referred to the articles of Judge Shattuck and Mr. Warren. *The True Meaning of the Term 'Liberty' In Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty and Property',* 4 Harvard Law Review, 365 (Shattuck), *The New 'Liberty' Under the Fourteenth Amendment,* 39 Harvard Law Review 431 (Warren) and see *Bill of Rights and Fourteenth Amendment,* 31 Columbia Law Review 468, *Con-*

stitutional Law: Liberty of Assembly Under the Fourteenth Amendment, 25 California Law Review 496. In any event this change of position on the part of the Supreme Court is indicative of the elastic character of the interpretative function and perhaps also of our favorite theory that rigid constitutions must be construed in the light of political science.

The words "liberty" and "free" are absolute in grammatical form. Are they absolute in constitutional or for that matter in any other interpretation? Mr. Lippman thinks not:

> "There are, so far as I can discover no absolutists of liberty; I can recall no doctrine of liberty, which under the acid test does not become contingent upon some other ideals. . . . For what every theorist of liberty has meant is that certain types of behaviour and classes of opinion better regulated should be somewhat differently regulated in the future."
>
> 124 Atlantic Monthly, p. 616, quoted in 21 Columbia Law Review p. 526, p. 529.

If they are not absolute but conditional how must we determine the conditions: In part certainly from the history and philosophy of the concepts for which they stand. To attempt any extended exposition of either would enlarge this opinion beyond any reasonable limits and be an impertinence to those better qualified than this court. In the case of "liberty" it would be a word of supererogation because the meaning applicable to the case at bar is not in dispute. That meaning is an acknowledgment of a right of locomotion and a consequent right to freedom from restraint of the person except as a result of due legal process. It may not be amiss, however, to give some brief attention to the history and philosophy of the more controversial word free as applied to speech and assembly.

As the history of free speech is the outgrowth of its philosophy the latter takes precedence. Furthermore it can best be gathered from wiser and more eloquent pens. We

are arranging the quotations under headings that seem to us appropriate to the logic of the thesis. A fortiori we have included excerpts indicating dissent.

A. From the point of view of the persons expressing the thought.

I. The instinct for the expression of thought in human beings is as inevitable as the thought process itself.

> ". . . nam nec peritissimi, ne dicam plebem, tacere sciunt. Hoc Hominum commune vitium est, consilia sua, etsi tacito opus est, aliis credere."
>
> Spinoza.
>
> TRANSLATION. "Not even the wisest can hold their tongues and it is a universal vice of men to tell their ideas to others even when silence is needful."

> "For as long as human beings have tongues and minds they will say what they think and they will think differently."
>
> Freedom of Speech During and Since the Civil War, 18 American Political Science Review, p. 712, Eliel, above cited.

> "Force in matters of opinion can do no good, but is very apt to do hurt, for no man can change his opinion when he will, or be satisfied in his reason that his opinion is false because discountenanced."
>
> Rev. Jeremy Taylor.

> "The power of communicating thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society; and therefore it seems to follow that human laws ought not to interpose, nay, cannot interpose, to prevent the communication of sentiments and opinions in voluntary assemblies of men."
>
> Lord Chief Justice Eyre.

"Man has a right to thing all things, speak all things, write all things, but not to impose his opinions."

Machiavelli.

"It is not the law that is to be found in books that constitutes—that has constituted, the true principle of freedom in any country at any time. No, it is the energy, the boldness of a man's mind which prompts him to speak not in private, but in large and popular assemblies, that constitutes, that creates in a state the spirit of freedom. This is the principle that gives life to liberty; without it the human character is a stranger to freedom."

Rt. Hon. C. J. Fox.

II. So to repress it is dangerous,

"Finally, the most efficient of means for the preservation of the state from revolution is that which is in general the least considered—a system of education in the spirit of the constitution."

Aristotle.

"Since, therefore, no one can abdicate his freedom of judgment and feeling; since every man is by indefeasible natural right the master of his own thoughts, it follows that men thinking in diverse and contradictory fashions cannot, without disastrous results, be compelled to speak only according to the dictates of the supreme power."

Spinoza.

"But there is one only thing which gathers people into seditious commotions, and that is oppression.

"There is a remedy at hand, better than force, if you and your friends will use it, which cannot but prevail; and that is, let the ministers of truth be as diligent; and they bringing truth with them, truth obvious

and easy to understand, as you say what is necessary to salvation is, cannot but prevail."

John Locke.

"The press must be free; it has always been so and much evil has been corrected by it. If Government finds itself annoyed by it, let it examine its own conduct and it will find the cause—let it amend it and it will find the remedy."

Thomas Lord Erskine.

But see contra:

"We lawyers, who have seen the unreliability of evidence, know the truth about truth, which is that, unsupported by the sanction of Authority, it is as little conducive to public order as a lie. To the ignorant and brawling fanatics who stir you with their pother about liberty, political or civil liberty seems to be the principal end for which government ought to exist, instead of the furtherance of the commonwealth to the greatest extent."

Austin.

"Democracies which have gone fascist have gravely sinned by their leniency, or by too legalisite concepts of the freedom of public opinion. Slowly, the remaining democracies are remedying the defect. In some instances, the criminal codes are reformed in order to cope with the misuse of the press and of free speech to foster subversive propaganda or recriminations which affect the dignity of the republican and democratic institutions."

Militant Democracy and Fundamental Rights, by Karl Loewenstein, 31 American Political Science Review, pp. 417, 638, at 652.

III. and to permit it salutary.

"The only security of all is a free press. The force of public opinion can not be resisted when permitted

freely to be expressed. The agitation it produces must be submitted to. It keeps the waters pure."

Thomas Jefferson.

"With effervescing opinions as with not yet forgotten champagnes, the quickest way to let them get flat is to let them get exposed to the air."

Mr. Justice Holmes, letter to a friend, January, 1921.

"We have learned considerable from the affair and I might say that the lesson briefly is this: Street speaking should be allowed as far as possible, where it does not absolutely interfere with traffic, so as to give to an agitator the right to give vent to his feelings if he desires. It is safer to let him talk than to shut him up."

Freedom of Assemblage and Public Security, Brooks, Vol. 9 Publications of the American Sociological Society p. 11, p. 12.

"Pent-up volcanoes destroy far and wide when they burst their barriers, but the open crater pointed heavenward furnishes an excellent safety valve for hidden fires. Suppress social discontent, and riots follow; but allow men through their natural leaders to speak their grievances freely, through press and platform, and the very expression of them relieves the situation and becomes a method of education. We of the twentieth century are as yet such babes in knowledge, that we might far better furnish free forums at public expense, to any man or set of men who believe they have some new thing under the sun to talk about."

Discussion by J. Q. Dealey, Brown University, Vol. 9 Proceedings of the American Sociological Society p. 42, p. 43.

B. From the point of view of the thoughts expressed;

I. Truth is not absolute;

"And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"

John Milton.

"The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common."

John Stuart Mill.

"Evidently such proposals to limit the right of free speech, political or religious, can be defended only by making the tacit assumption that whatever political or religious beliefs are at the time established, are wholly true; and since this tacit assumption has throughout the past proved to be habitually erroneous, regard for experience may reasonably prevent us from assuming that the current beliefs are wholly true. We must recognize free speech as still being the agency by which error is to be dissipated, and cannot without papal assumption interdict it."

Herbert Spencer.

"If persecution is unnecessary in the defence of truth, it has a fearful efficacy in preventing men from discovering it; and when it is so employed, as infallibility does not exist among mankind, no man can assuredly decide. For truth is scattered far and wide in small portions among mankind, mingled in every system with the dross of error, grasped perfectly by no one, and only in some degree discovered by the careful comparison and collation of opposing systems."

W. H. H. Lecky.

"He that will not reason is a bigot; he that cannot reason is a fool; he that dares not reason is a slave."

Sir William Drummond.

"If there is anything in the universe that can't stand discussion, let it crack."

Wendell Phillips.

"The man who will not investigate both sides of a question is dishonest."

Abraham Lincoln.

"To court discussion, is, of course, no certain proof that we are right, but to be afraid of it, is conclusive indication that we suspect at least we may be wrong."

Abraham Lincoln.

But see contra:

"There is nothing so true and good that skilful talkers cannot make it appear doubtful."

Bodin.

II. The heterodoxy or minority of today is the orthodoxy or majority of tomorrow;

"When there are persons to be found who form all exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always probable that dissentients have something worth hear-

ing to say for themselves, and that truth would lose something by their silence."

John Stuart Mill.

"In his person though he were the worst of men I contend for safety and security."

Chatham.

"The community which dares not protect its humblest and most hated member in the free utterance of his opinions, no matter how false or hateful, is only a gang of slaves."

Wendell Phillips.

"But the consideration which has the most enduring weight is the weakness of our capacity for truth. So much is doubtful, so much is altogether unknown; so indolent, so timid, so careless of truth, are the mass of men; so ill-situated and so ill-provided for knowing what is true are the rulers of every state, that the public cannot be too wary in committing to a government, a government cannot be too lenient in exercising any control over the expression and diffusion of ideas. And what holds good of governments, holds good also, although in a less degree, of public opinion."

. . . . . .

"And as it is with the reformer, so is it with the public whom he addresses. They may dislike his projects, they may suspect his motives, but they must debate the case upon its merits. For they too must confess that out of the numberless heresies of the past their present orthodoxy his arisen. They see that their own orthodoxy was once an innovation and may come to be a relic. It is but a relative orthodoxy. It too will pass, and they cannot say for certain what will succeed it. Thus forced to abandon dogmatism, they must be con-

tent to cling to honesty of purpose and scientific method."

Montague.

"One danger—the smaller one—yet sometimes troublesome, is the difficulty of ascertaining the will of the majority. The other danger is that minorities may not sufficiently assert themselves. Where a majority has erred, the only remedy against the prolongation or repetition of its error is in the continued protests and agitation of the minority, an agitation which ought to be peaceably conducted, carried on by voice and pen, but which must be vehement enough to arouse the people and deliver them from the consequences of their blunders."

James Bryce.

III. This is particularly so in the field of political science because of:

a) the nature of the subject matter—

"No good government has anything to fear from paper shot."

Oliver Cromwell.

"So true it is, however, that the discontent of the people is the only means of removing the defects of vicious governments, that the freedom of the press, the main instrument of creating discontent, is, in all civilized countries, among all but the advocates of misgovernment, regarded as an indispensable security, and the greatest safeguard of the interests of mankind."

James Mill.

"It is the ancient and constitutional right of this people to canvass public measures, and the merits of public men. It is a homebred right, a fireside privilege. . . . It is not to be drawn into controversy. It is as

undoubted as the right of breathing the air and walking on the earth. Belonging to private life as a right, it belongs to public life as a duty. This high constitutional privilege, I shall defend and exercise in all places in time of war, in time of peace and at all times. Living, I will assert it."

Daniel Webster.

"The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them; whereby oppressive officers are shamed or intimated into more honorable and just modes of conducting affairs."

The Continental Congress of 1774.

But see contra:

"First, the exercise of final judgment as to the expression of opinions and doctrines. So prolific in discord is freedom of expression that the great end of civil life is ever in peril without a strict supervision of speech and writing by the supreme authority. This is Hobbes's concise reply to the Miltonic plea for unlicensed printing."

Bodin.

"Curbing the speech of the governed is one of the first measures of a government when it is ever so slightly alarmed, and except in ancient Athens no one has ventured to suggest that it is not a legitimate exercise of power."

Freedom of Speech in Ancient Athens, Max Radin, Vol. 48, American Journal of Philogy, p. 215.

1) and more especially where the specimen of that subject matter happens to be a democracy—

"The sun might as easily be spared from the universe as free speech from the liberal institutions of society."

Socrates.

"If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

Thomas Jefferson.

"Freedom of opinion, of speech, and of the press is our most valuable privilege, the very soul of republican institutions, the safeguard of all other rights. . . . Nothing awakens and improves men so much as free communications of thoughts and feelings.

"If men abandon the right of free discussion; if, awed by threats, they suppress their convictions; if rulers succeed in silencing every voice but that which approves them; if nothing reaches the people but what would lend support to men in power—farewell to liberty. The form of a free government may remain, but the life, the soul, the substance is fled."

William Ellery Channing.

"Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness."

Cooley.

"The theory of government requiring royalty to be invested with perfection, which forbids question or discussion, is diametrically opposed to our theory of popular government, in which the utmost latitude and freedom in the discussion of business affecting the public and the conduct of those who fill positions of public trust, that is consistent with truth and decency, is not only allowable but essential to the public welfare."

Mr. Justice Scholfield, *Storey v. People*, 79 Illinois, p. 45, 51-52.

"The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."

Mr. Chief Justice Waite, *U. S. v. Cruikshank*, 92 U. S. p. 542, 552.

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Mr. Chief Justice Hughes, *De Jonge v. Oregon*, 299 U. S. p. 353, 365.

b) the unavoidably biased character of its judge (the censor);

"In other words, printing and speaking are to be subject to general rules of law, not to administrative censorship or arbitrary legislative restriction."

Equitable Relief Against Defamation and Injuries to Personality, Roscoe Pound, 29 Harvard Law Review p. 640, 651.

"that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy."

Thomas Jefferson.

c) because of an obvious distinction between thought and action, words and deeds.

"that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

Thomas Jefferson.

"The true distinction (between persecution and punishment) is perfectly obvious. To punish a man because he has committed a crime, or is believed, though unjustly, to have committed a crime, is not persecution. To punish a man because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrines with him, that he will commit a crime, is persecution; and is, in every case, foolish and wicked."

Lord Macaulay.

"silly leaflet of an unknown man."

Mr. Justice Holmes, dissenting opinion in *Abrams v. U. S.*, 250 U. S. p. 516, 628.

"It is the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts."

Charles Evans Hughes, on the ouster of the Socialist assemblyman, at Albany, New York, January, 1920.

"Our state rests too firmly upon the devotion of its citizens to require for its protection an imprisonment of five years for the mere expression of an erroneous, or even an illegal, political doctrine, unaccompanied by an overt act."

Governor Alfred E. Smith.

Anything more than an outline of the history of free speech would be a pedantic display of very easily obtainable knowledge. The standard authorities in the Anglo-Saxon countries are in England, *Liberty of the Press, Speech and Public Worship,* Paterson; in the United States, *Constitutional Free Speech,* Schroeder; *Freedom of Speech,* Chafee; The *Inquiring Mind,* Chafee, (the law review article quoted at some length by the learned Supreme Court of New Jersey in a recently filed opinion is to be found in Chapter 1 of *Freedom of Speech,* Chafee); *The Law of American Constitution,* Chapter 13, *Freedom of Religion, Press and Assembly,* Burdick; *The Reference Shelf,* Vol. 4, No. 9, *Civil Liberty,* Edith M. Phelps; *Freedom of the Press,* Dawson; *Censorship of Speech and the Press,* Beman; *Essays on Jurisprudence and Ethics,* Chapter 6, *The Theory of Persecution,* Sir Frederick Pollock; *Proceedings of the American Sociological Society,* Vol. 9, p. 67, Schofield. There are in addition a galaxy of articles in legal periodicals, the best of which in our judgment are found in: *Freedom of Speech* and of *the Press,* 2 Minnesota Law Review, 239; *Does the Constitution Protect Free Speech,* 19 Michigan Law Review 487; *Power of Government Over Free Speech and the Press,* 29 Yale Law Journal 410; *Free Speech in War Time,* 21 Columbia Law Review 526; *The Courts and Free Speech,* 8 Illinois Law Review 141; *Freedom of Speech and the Press.* 30 Yale Law Journal 48; *Free Trade in Ideas,* 11 Journal of the American Institute of Criminal Law and Criminology, 181; *Freedom of Speech and the Espionage Act,* 55 American Law Review 695; *Freedom of Speech and of the Press in the Federal Period, Sedition Act,* 18 Michigan Law Review 615; *Freedom of Speech and of the Press.* 4 Indiana

Law Journal 445; *Freedom of Speech During and Since the Civil War,* above cited; *Freedom of Speech and the Press,* 21 Georgetown Law Journal 35, 161.

To summarize their very thorough expositions. The problem of free speech became acute, as might be expected with the invention of and perfection of the printing press. At first as part of its policy of control over monopolies, the Crown made this new art subject to license. The advantage of such control by license as the handmaid of tyranny soon became apparent. Although not considered a liberty essential enough to be included in the Petition of Right (1628) or the Grand Remonstrance (1641), the struggle to free the printing press finally became part of the contest of the people against the Crown. This battle included, of course, a simultaneous resistance to another way of accomplishing prevention, namely, repression. So we find the agitation against the laws of seditious libel, the letters of Junius, the trial of the Printer and "that devil Wilkes". The first controversy ended in the victory expressed in Blackstone's pronouncement about previous restraints. Blackstone's *Commentaries,* Vol. 4, Chapter 2, p. 151. He raised freedom of press from a literary and political watchword to an accepted legal concept. *Freedom of Speech and the Press,* 30 Yale Law Journal (Corwin) 49). The second in a transference of adjudication from the King's Judges (whether in the Star Chamber or Lord Mansfield in open court) to the 'people's shopkeepers'. See *Law of the Constitution,* Dicey, 4th Ed., p 234. There has been much discussion as to the substance of any distinction between previous restraint and subsequent punishment. *Freedom of Speech, Chafee,* above cited (Chapter 2, Opposition to the War with Germany); *Freedom of Speech and the Press,* 21 Georgetown Law Journal 35, 161, above cited; *Does the Constitution Protect Free Speech,* 19 Michigan Law Review 487, above cited; *Power of Government Over Free Speech and the Press,* 29 Yale Law Journal 410, above cited; *Free Speech,* Schroeder, above cited, (Chapter 2, Blackstone's Critics); *Freedom of*

Speech During and Since the Civil War; Eliel, above cited; *Problems Relating to Bill of Rights and General Welfare;* New York State Constitutional Convention Committee, Vol. 6, above cited, Section 2 of Chapter 12. There is at least this difference. Advance action forestalls the opportunity for martyrdom.

The United States came into being almost simultaneously with the outcome of the struggle we have been talking about. The Colonies had had a similar history of repression at the hands of the Royal Governors:

> "There are no free schools or printing and I hope we shall not have these 100 years hence, for learning has brought disobedience and heresy and sects into this world and printing has divulged them. Libels against the best government have resulted. God keep us from both."
>
> Governor Berkeley, *Watson's Constitutions,* Vol. 2, p. 1400.

Development of Freedom of the Press in Massachusetts, Dunniway; *Constitutional Free Speech,* Schroeder, particularly Chapters 5 and 7. One might therefore expect to find some countervailing provision in the Constitution. One was submitted, but here we come across that fear of the central government which is both the reason for and the handicap of Federations (*Etat Federal,* Le Fur, *Les Etats Federeaux —Etude Droit Constitutional Positif* Ch. Durand; Dr. en Droit; *La Theorie Juridique De L'Etat Federale,* M. Mouskeli, Dr. en Droit; *Failure of Federalism in Australia,* Canaway.). The suggestion drafted by Mr. Pinckney was rejected (*Records of the Federal Convention,* Max Farrand, II, 334, 340, 341, 545, III, 122, 256, 290, 595, 599, 609. The rejection was of short duration. The ratifying states considered the fear of centralization in this instance exaggerated and the danger great. They insisted on the inclusion of a guarantee of free speech and assembly in the bill of rights. *Elliot's Debates* (2d. ed. 1836) I, 359, 360, 362, 369, 371, 375, II, 424, 511, 537, III, 411, 414, 415, 481, 551, IV, 159, 175, 269, 301,

302. *Pennsylvania and the Federal Convention*, J. B. McMaster and F. D. Stone. Since then the Supreme Court has given its approval to the Blackstone definition. *Patterson v. Colorado*, above cited, *Near v. Minnesota*, above cited, *Lovell v. Griffin*, 303 U. S. 444, *Grosjean v. American Press Co.*, above cited. The principal dispute has revolved around the validity of a distinction between prevention and repression above referred to. It would be accurate to say, we think, that the high court has found a distinction but has divided both in the same and in different decisions between clear and present (imminent) danger and tendency, remote or otherwise, as a definition of that distinction. *Schenck v. U. S.* 249 U. S. 204; *Frohwerk v. U. S.*, 249 U. S. 204; *Debs v. U. S.*, 249 U. S. 211; *Abrams v. U. S.*, 260 U. S. 616; *Schaefer v. U. S.*, 251 U. S. 466; *Pierce v. U. S.*, 252 U. S. 239; *O'Connel v. U. S.*, 253 U. S., 152; *Gilbert v. Minnesota*, 254 U. S. 325; *Grosjean v. American Press Co.*, above cited and *Herndon v. Lowry*, 301 U. S. 242.

Free assembly is free speech in particular circumstances. It is in one sense free speech carried to its ultimate and logical conclusion and in another free speech in its most complicated and delicate phase. However that may be, the history and philosophy of free speech itself are applicable and in so being account for the comparative paucity of material on free assembly. Apart from the foreign sources referred to later, we have found the authorities to be as follows: a) One reference by Representative Sedgwick in the *Debate on the Bill of Rights*, Annals of Congress (1788), p. 759; b) a chapter in *Liberty of the Press, Speech and Public Worship, Paterson*, (Chapter 2, Freedom of Public Meetings and Addresses and Petitions) and one in *The Law of the Constitution*, Dicey, (Chapter 7, The Right of Public Meeting); c) sections in Paterson and the New York Committee book, above cited, those sections being entitled, *Freedom of Thought as Developed in Public Meetings*, Chapter 1, p. 12, Paterson, *Freedom of Assembly as an Independent Right*, Chapter 12, section 3, p. 154, New York

book and *Publication, Speech or Assembly Which Creates a Danger That Unlawful Acts Will Be Committed,* Chapter 12, section 4, p. 163, New York book; d) four law review articles, *The Right of Assembly,* 9 New York University Law Quarterly Review 1, Jarrett and Mund; *Public Order and the Right of Assembly in England and the United States—a comparative study,* 47 Yale Law Journal 404; *Police Powers and Public Meetings,* 6 Cambridge Law Journal 175, E. S. Wade; *Reasonable Restrictions Upon Freedom of Assembly,* Proceedings of American Sociological Society, Vol. 9, p. 29, Hon. Arthur Woods, Police Commissioner; e) two law review notes, *Limitations on the Right of Assembly,* 23 California Law Review 180; *Restrictions on the Right of Assembly,* 42 Harvard Law Review 265; f) debates in the *House of Commons on the Public Order Bill of 1936.* (1 Edward VIII and George VI, Chapter 6, p. 60), 317 Parliamentary debates 1350 also 318 Parliamentary debates 150, 582, 1730; g) certain United States Supreme Court cases all of which except one comingle the right of free speech and free assembly in the same case, *U. S. v. Cruikshank,* 92 U. S. 542, above cited, *Davis v. Commonwealth,* 167 U. S. 43, *De Jonge v. Oregon,* 299 U. S. 353, above cited, *Herndon v. Lowry,* 301 U. S. 242; h) and two books not available in the United States, *Law and Political Uniforms, Public Meetings and Public Armies,* Baker; *Law Relating to Public Meetings and Processions,* Crew.

Inasmuch as free assembly is a special form of free speech, the philosophy of the latter applies. Because it is only a form of free speech we can expect to find and do find that philosophy and that history modified by the particular form. For that reason, if for no other, we need not indulge in any elaborate discussion and confine ourselves therefore to a few quotations on both of the stated phases and to a short history.

A. Free assembly is a special form of free speech.

> "Closely connected with the right just mentioned is the right of citizens peaceably to meet and to take public matters into consideration."

Civil Liberty and Self-Government, Francis Lieber, above cited, Chapter 12, Sec. 16, p. 127.

"So long as such public meeting can be held at the call of any voice from the crowd, and the people can meet in any numbers without let or hindrance and discuss and exchange their setiments on anything and everything that concerns them—that touches their interests or their feelings—this is as near the enjoyment of perfect liberty as is attainable."

Paterson, above cited, p. 12-13.

"The right of assembly is a self-evident, inalienable right of the people and to dwell at such length upon it must make us appear trifling in the eyes of our constituents. It might as appropriately be declared that a man should have a right to wear his hat if he pleased; that he might get up when he pleased and go to bed when he thought proper. Surely it was not necessary to enter these trifles in a declaration of rights in a government where none of them were intended to be infringed."

Annals of Congress 1834, p. 759.

"The close relationship between the right to assemble and the right to speak and publish is apparent. Indeed, to many, the function of freedom of assembly is merely to give occasion and force to freedom of speech and press."

New York Committee book, above cited, p. 154.

"Man is a gregarious animal. Since earliest times men have asembled together for purposes of feasting, hunting, sympathy, and companionship. In the course of time when the family or household became the economic unit, people assembled for social, religious, political and judicial purposes."

The Right of Assembly, 9 N. Y. U. Quarterly Law Review, p. 1, above cited, p. 4.

B. Because it is only a form of free speech.

"The ancient tyrants always feared any large congregation of men in towns, and endeavored to find rustic occupations for them, so as to separate them and divert their minds; and it is said Peisistratus commenced the building of the Temple of Jupiter for some reason of this kind."

2 Thirlw. Gr. 71.

"The right of assembly thus appears more restricted than many other elements of personal liberty. This is inevitable, for in the misuse of concerted group action lies the most powerful menace to public peace. *Salus reipublicae suprema lex.* But, for the present at least, the limit of restriction seems to have been reached, and the rights of the individual demand a wise and fair application of the existing laws."

Restrictions on the Right of Assembly, 42 Harvard Law Review, p. 265, above cited, p. 269.

"A proper consideration of the law relative to any of the civil liberties must recognize the unique character of this brand of jurisprudence. Civil liberties derive their justification from a philosophy which tends to weaken or disappear in the face of passions and fears aroused by social stress and economic change. It is not enough to write freedom of assembly into the constitution. The constitution is not self executing. Yet it takes on vitality in direct proportion to the unpopularity of the groups whose liberties are successfully guarded.

"If freedom of assembly is not protected on the immediate occasion, it stands little opportunity of later vindication. Minority groups are seldom equipped with the requisite funds or influence to render vindication by legal process either consistent or certain. The consequence is a sporadic declaration of the lawfulness

of a disrupted meeting, the occasion for which has long since passed."

P. 191-192.

. . . . . .

"The subject is a confused and difficult one. A proper balance between civil liberty and public safety depends on a long maintained tradition of wisdom and moderation in the laws themselves, and no less wisdom and moderation in their administration."

Limitations on the Right of Assembly, 23 California Law Review 180, above cited, p. 193.

"To those who wish to preserve free speech, more pressing problems are presented by the limitations on the right of public assembly, for the cumulative effect of these restrictions is serious. Repression of this sort is sought to be justified by the plea that it is necessary to maintain the public order. Some restrictions are necessary to curtail conduct which actually interferes with the public safety, but these measures are frequently used where the threat of disturbance is remote. In the long run the public order may best be served by risking a little disorder. To let off steam may scorch the ceiling; it does not blow off the roof.

"Several proposals for reform recur. It is sometimes urged that all discretion be taken away from the law-enforcing agencies. The suggestion is futile. Every statute, every ordinance must look to men for its interpretation. But this study has indicated that the wording of statutes does have some significance. It might therefore be helpful to attempt to tighten up those statutes seeking to maintain the public order. Within broad limits, a standard of conduct can be described which should be extremely difficult to twist or distort. But a word can have only that meaning which a man imports to it.

"There is of course some hope that the law-enforcing agencies might be induced to use their discretion

more wisely. The American policeman might at least be taught to follow the example of his English contemporary by discarding some of his more brutal tactics. And judges might be educated to be frankly suspicious of police administration in civil liberties cases. But these vague hopes are hardly likely to be achieved."

Public Order and Right of Assembly, 47 Yale Law Journal #404, above cited, p. 431-432.

"If you are going to allow the free play that is necessary for political demonstration and discussion in a democracy you must sometimes have occasions when tempers and feelings run high in particular districts and you must then have the liability of some public disorder taking place."

Debates on Public Order Bill (House of Commons) Vol. 318 Parliamentary Debates, 1936-1937, p. 182.

But see contra.

"But liberty, gentlemen, must not be converted into license. What they ask for is license, and this I shall never grant! You can, if you wish, organize and march along in processions and I shall have you escorted."

Mussolini as Revealed in His Political Speeches, November, 1914, August, 1923, by Bernando Quaranta di San Severino.

The same may be said of the history of free assembly. If free speech was considered obnoxious and was restricted, its indulgence in the presence of more and perhaps involuntary listeners must be deserving of even more attention. So in the England of Charles the Second the judges were consulted as to whether the King could by proclamation shut up the coffee houses (nurseries of idleness and pragmaticalness). It was not apparently until the excitement attendant upon the expulsion of Wilkes from the House of Commons that the holding of public meetings was developed.

The government acted promptly to prevent any meetings called except by public officials. *32 Parl. Hist. 308, 35 Parl. Deb. 1230.* It took similar action twenty years later when the delay in the reform of Parliament led to the irritation of the people and the Manchester meetings. This last enactment was limited to five years and since then speech at public assemblies in England has been subject only to condition peculiar to them and accordingly more appropriately developed later in this opinion. In this country we have been able to find practically no separate history of free assembly as distinguished from free speech other than that developed in the cases and in the articles and books already cited. We have already quoted the only reference to the matter in the Debates on the Bill of Rights. The guarantee itself is in effect in nearly all the state constitutions.

> "A survey of the state constitutions today reveals that all but four states have made an express guarantee of this right. (The four exceptions are Maryland, Minnesota, New Mexico and Virginia.) Aside from these four exceptions, the state provisions show a marked degree of similarity. They may be classified first of all into two major divisions: The temper or manner of assembly; and the purpose of the assembly."
>
> The Right of Assembly, 9 N. Y. U. Law Quarterly Review, above cited, p. 16.

This survey of the philosophy and history of liberty, free speech and assembly leaves an impression of some qualification of their meaning. We ascribe that qualification to the nature of democracy itself. That type of government is based on the consent of the governed. It is based on peace and opposed to violence. It follows that in violence we must look for the limitations on or qualifications of the meanings we have been discussing. That violence may be directed against the government itself, it may be directed by some of the people against others of the people.

This right of the government to protect itself against violence has not always been acknowledged.

"But mere verbal insults were not considered treason (Digest or Pandect, 48th Book, 4th Title, 7th Fragment, 3rd edition); for said the Emporors Theodosius, Arcadius, and Honorious, in language that is a standing rebuke to pusillanimous tyrants, if the words are uttered in a spirit of frivolity, the attack merits contempt; if from madness they excite pity; if from malice, they are to be forgiven."

Code of Justinian 9th Book, 7th Title, First Constitution.

"I hold that a little rebellion now and then is a good thing and as necessary in the political world as a storm is in the physical. . . . An observation of this truth should render honest republican governors so mild in their punishment of rebellions as not to discourage them too much. It is a medicine necessary for the sound health of government."

Thomas Jefferson.

"This whole theory as to the power of society to displace the holders of governmental authority, is, of course, merely one version of the so-called 'right of resistance'. Locke's phrase for designating this right is the 'appeal to Heaven', which he regards as the privilege not only of the body of the people but even of any single man.

. . . . . .

"'The people' are as a rule 'more disposed to suffer than right themselves by resistance.' Only when injustice and oppression have gone very far and have become obvious to a majority of the people will the 'appeal to Heaven' actually be made."

Political Theories, From Luther to Montesquieu, Dunning, p. 362-363.

It can be attributed to the right of self-preservation and as such is applicable to every form of organized society. *Comm. v. Widovich*, 145 Atlantic 295 (Pennsylvania). Our own attribution seems more in the spirit of the democratic

circumstance. At any rate, it is acknowledged and any doubts relate first to the wisdom of its exercise in respect to mere words as opposed to acts and second what words should be proscribed or punished. (cf. United States Supreme Court cases and articles cited under distinction between prevention and repression.) In this last aspect we have again the cause and effect problem of Judge Learned Hand's famous phrase about words as the "triggers of action rather than keys of persuasion" and presumably the same difference among the judges as to its correct answer.

The people of the United States have shown a complete faith in the effectiveness of dealing with words even before they are transmuted into deeds and have not been impressed with the quotations expressed in the sentiments of two English legal worthies.

> "The sergeant in a very grave speech laid open the inconvenience of making words treason—they were often ill-heard and ill-understood and were apt to be misrecited by a very small variation."
>
> Bishop Burnett's History of His Own Time, Vol. 3, p. 39.

> "How dangerous it is to depart from the letter of that statute and to multiply and enhance crimes into treason by ambiguous and general words such as accroaching of royal power, subversion of fundamental laws and the like. Since this offense which from its nature is so capable of being created and judged of by rules of political expediency is made the spear of the occasion."
>
> Erskine.

This faith and its resulting action seems to have followed closely upon the alarm natural to manifestations here and in the world generally of symptoms more germane to political systems based not upon the peaceful consent of the governed but upon the violent coercion of the dissenting. So after the French Revolution we had the alien and sedition law and after the tragic assassination of President McKin-

ley the anarchy statutes; a typical one is *Laws of New Jersey*, (1902) Ch. 133; cf. *The Nation and the Anarchists*. Wambaugh 13 Green Bag 461; *25 N. J. Law Journal*, p. 32, editorial note; *31 N. J. Law Journal*, p. 140, *Charge to the Grand Jury*, and see also *State v. Boyd*, 86 N. J. Law 75. The spirit behind all this legislation is well epitomized in Burke's reflections on the French Revolution.

> "These associators to prosecute, who keep watch of late upon our words and upon our looks, are associated, it seems, to preserve our excellent constitution from the contagion of France, where an arbitrary and tyrannous democracy, under the colour of popular freedom, destroys all the securities and blessings of life—but how does it destroy them? How, but by the very means that these new partners of executing power would themselves employ, if we would let them."

And see also:

> "Fisher Ames died in 1808 obsessed by fears his children (one of whom lived to be Chief Justice of Massachusetts), must look forward to their future servitude to the French."
>
> Henry Adams History of the United States, 183.

Their success or failure is in the case of the alien and sedition law a matter of past history (*The American Leviathan —The Republic in the Machine Age*, Beard, p. 55). In the case of the anarchy and criminal syndicalism statutes it is a matter of present prophesy.

We have given these possible qualifications of the significant constitutional words on the theory that their assumption may eliminate the unsatisfactory factual disputes that beset law suits. Let us now consider them in the light of the defendants specific acts. We have seen that they fall into five different categories. First the police of Jersey City removed (or excluded if prompt enough) the plaintiffs from the municipal limits. This removal (or exclusion) was by administrative (police) fiat alone. They exercised a censorship of persons. The constitutional word applicable here

is that appropriate to persons, namely, liberty. That liberty includes the right of locomotion (movement) is both obvious and recognized by the writers:

> "The right of locomotion or of free egress and regress as well as free motion within the country, is another important individual right and element of liberty."
>
> Civil Liberty and Self-Government, Lieber, above cited, p. 95,

also *Manual of Political Ethics*, Lieber, Vol. 1, Book 2, Chapt. 5, p. 184.

> "I should say that it means exemption or immunity from unlawful imprisonment or detention of the body, freedom to go and come on lawful business or pleasure, commonly called the right of locomotion; the right to acquire, hold and convey property; the right to make contracts and to labor in any lawful calling to earn a living; to marry and have family."
>
> A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment of the Constitution of the United States, Brannon p. 110.

> "There are naturally few invasions of this cardinal right so far as a man's person or free movement is concerned in our country.
>
> p. 97.
>
> . . . . . .
>
> "Further, the right to liberty includes constitutionally the right to move, go and come, live where he will, emigrate, and if a citizen, to return; also to forswear his allegiance and expatriate himself, but not against his will; he can never, even as a punishment for crime, be banished."
>
> The American Constitution as it Protects Private Rights, Stimson p. 99.

and by the cases. *The Passenger Cases*, 7 Howard, 283, *Crandall v. Nevada*, 6 Wall 35, *William v. Fears*, 179 U. S.

270, *Twining v. N. J.*, 211 U. S. 184, *Territory of Hawaii v. Andhuą,* 48 F. (2d) 171, *U. S. v. Miller*, 17 Fed. Supp. 65. Although relegated to the general terms in the law of England and in our Constitution, it has been considered deserving of specific mention in the constitutions of other federations.

"Art. 44. Aucun canton ne peut renvoyer de son territoire un de ses ressortissants, ni le priver du droit d'origine ou de cite.

"Art. 45. . . . Exceptionnellement, l'etablissement peut etre refuse ou retire a ceux qui, par suit d'un jugement penal, ne jouissent pas de leurs droits civiques."

Swiss Constitution, 1874.

TRANSLATION—"Art. 44. No Canton can send out from its territory anyone of its residents nor can it deprive anyone of his right of domicile or of citizenship.

"Art. 45. . . . By way of exception the right to settle can be refused or withdrawn from those who by reason of conviction of crime have lost their civil rights."

"Art. 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, the following rights, to wit: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, travel through, or leave the Argentine territory; to publish their own ideas through the press without previous censorship; to use and dispose of their property; to associate together for useful purposes; freely to profess their religion, and to teach and to study."

Constitution of the Argentine, 1898.

The liberty being acnowledged, any interference with it must be by due process of law. We need not cite authority either for the general proposition or for its particular application here since due process postulates a "day in court."

A police officer is confined to an insistence on such day. In other words, he can arrest and convey to the reasonably convenient trier and nothing more. *5 Corpus Juris 430* and cases cited. This was acknowledged even in the Bisbee I. W. W. Deportation cases, *State of Arizona v. Wootton*, 6 American Bar Association Journal, Part 2, 99, pamphlet *The Law of Necessity* published by Bureau of Information (Arizona) where defense counsel said:

> "We expect to show that the jails in this country were inadequate within which to confine the said conspirators . . . ."
>
> p. 7.

and the practice generally was condemned by a Pennsylvania Judge:

> " 'The action of the mob—I take pains to use the accurate word—in running out of town with threats of violence, the officials of the miners' union, was sheer anarchy, an outrageous violation of the rights guaranteed by the Constitution to the humblest person.' "
>
> The Story of Civil Liberty in the United States, Whipple, above cited, p. 221.

This without more disposes of the so-called deportations. We go further however and maintain that neither a city, a state, nor the nation can resort to the banishment of its citizens even after a compliance with the due process and fair trial requirements and even as a punishment for crime. Any such drastic power is manifestly an attribute of sovereignty. As such it does not pertain to states and a fortiori to cities (*Crandall v. Nevada*, above cited, *The Passenger Cases*, above cited.) Any contrary doctrine would destroy our national unity and relegate us to the passport system of earlier times. We find the learned author of "*Das Passwesen*," Walter Transfeldt, describing the former practice in Germany of requiring passports for domestic as well as foreign travel, as follows:

> "A means of facilitating police supervision over travelling apprentices, beggars, former criminals, and

suspicious characters, and also a form of political check. The general point of view with respect to the passport requirements at that time in Germany as a supposed means of protection against politically dangerous persons, or against the introduction of new political ideas, was expressed most clearly by the pronouncement of the Confederation of May 5, 1832. (Protokolle d. Deutschen Bundesverammlung 1832 S. 949, 953)."

p. 18.

Dr. Paul Vallotton in his *Dissertation De License Et De Doctorat* takes us even further back into antiquity:

"Tres anciennement il n'y avait pas de trafic international des voyageurs dans le sens ou nous l'entendons aujourd'hui. L'etranger etait par definition l'ennemi et d'ou qu'il vint il etait accueilli comme tel."

p. 16.

TRANSLATION: In very early days there was no international travel in the sense we understand it now. The foreigner was by definition an enemy and wherever he went he was received as such.

If there could be some theory of quarantine it is applicable only in the field of physical science. Ideas are not Japanese beetles. This thought finds expression in the opinions of the United States courts.

". . . . While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection."

Hannibal and St. Joseph R. Co. v. Husen, 95 U. S. p. 465, 472.

"It will be observed that no overt act is charged against any of the class of persons threatened and about to be imported by the defendant Coal Company over the defendant Railroad Company's lines. They are not alleged to be convicts or ex-convicts, nor are they alleged to be paupers, idiots, insane, or diseased persons. They are said to be 'armed', and to belong to the 'low and lawless type of humanity'; not that they are low and lawless themselves, but are of that type. No statute of this state condemns the coming of such men hither. No expression of the legislative will relating to that class of men coming into the state has found a place in our laws. They are silent on the subject. It will be time enough to decide whether the state has the power to prohibit them coming when a proper case, based on such a statute, is brought to the attention of the Court. It is enough now to say that, under the fourteenth amendment, and under the commerce clause of the constitution, they now have that right."

State v. Arkansas and Kansas Coal Co. 96 Fed. 353 at 368.

"And the power of exclusion by the state, as we have already said extends only to convicts, lepers, and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge."

In re Ah Fong, 1 Federal Cas. p. 213, 216.

Furthermore quarantine is limited by definition to a current condition and not to be exercised on the basis of the probability of the recurrence of a previous condition (past conduct).

Deportation therefore is sanctioned in the single instance 1) of aliens, 2) by the nation, 3) under certain specified circumstances. Two of these, as one might suppose are anarchy and the advocacy of the overthrow by violence of the government whose hospitality they seek. Cases collected under *Section 137, Title 8. U. S. C. A.*, particularly notes 5

and 6. Even here some abbreviated but nevertheless actual hearing must be accorded the alien and the fiat of the administrative officer (here the Immigration inspector and not the policeman) is not constitutionally sufficient. Cases collected under *Section 137, Title 8. U. S. C. A., note 9.* Here also what words constitute such advocacy, is troublesome. *Strecker v. Kessler, District Director of Immigration and Naturalization,* 95 F. (2d) 976, Petition No. 330 for certiorari filed and granted (New York Times, October 21, 1938). This law and this procedure has been criticized. *Freedom of Speech,* Chafee, above cited, Chapter IV, The Deportations, p. 229.

We proceed from censorship of the persons claimed to have unpopular thoughts locked within their bosoms to prevention of communication of those thoughts. Thus we come to an interpretation of the constitutional word free. As we said earlier the attempted transmission of ideas to the people of Jersey City falls into two categories, to willing and to unwilling listeners. In the first category, the attempted penetration by opinion is by circular or leaflet distribution (the leaflets being by concession intrinsically harmless) and the "hiring of halls" for speakers.

At the beginning of this decision we spoke well of the candor displayed in the presentment of what is unquestionably a widely held point of view. We must make an exception in the leaflet maneuvers. We detect here traces of the least pleasant side of our profession induced no doubt, as we said, by the impossibility of reconciling the views of the Mayor and the Supreme Court. We think we detect these traces because the books are full of instances of similar tactics employed by the law departments of other cities governed no doubt by Mayors with similar views.

The strategy is the use of ordinances designed and phrased to protect the streets against being littered with the consequent clogging of sewers, fire and disease hazards and the traditional frightening of horses, *People v. Armstrong,* 73 Michigan 288, 294, 41 N. W. 275; *Wettengell v. City of Denver,* 20 Colorado 552, 30 Pacific 343; *Anderson v. State,*

69 Nebraska 686, 96 N. W. 149 for the purpose of protecting the minds of the people who walk those streets against being littered with certain kinds of ideas and again traditionally perhaps, being frightened. One might suggest the availability of street cleaning departments or refuse receptacles and some courts have even declared these ordinances invalid on the ground of unreasonableness. *Dillon Municipal Corp. 5th Ed. sec. 589, People v. Armstrong,* above cited (Michigan), *City of Chicago v. Schultz,* 173 N. E. 276 (Illinois). Furthermore as the purpose is to prevent "casting away" or "throwing to the wind" there is a distinction between non-commercial and commercial (advertising) matter, the American tradition being to overcome sales resistance forcibly. *City of Philadelphia v. Brabender,* 51 Atl. 374 (Pennsylvania), *Wettengill v. City of Denver,* above cited (Colorado), *Coughlin v. Sullivan,* 100 N. J. L. 42 (New Jersey). However that may be, it is unnecessary to elaborate the point in view of the Supreme Court's treatment of an identical ordinance of a Southern city. In declaring it unconstitutional, Chief Justice Hughes said:

> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing'. And the liberty of the press became initially a right to publish 'without license what formerly could be published only with one'. While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision."

Lovell v. Griffin, above cited at 451-452.

We were dissatisfied at the trial and we are dissatisfied now with the state of the record with respect to the private meetings. There the defense was a denial. The plaintiffs assert that they are unable to obtain private places in which to hold meetings and we have no doubt but that this is true. Counsel then offered to prove that this unavailability of forums is due to coercion by the City officials. His offer of testimony was bottomed on the statements of the hall owners made to the plaintiffs or some of them. We held, whether rightly or wrongly is not for us to say, that such evidence could not come from the plaintiffs but must come from the very persons assigning these reasons for thei refusal to rent. The Mayor with the frankness before adverted to denied that the city had brought pressure to bear and explained the situation on the ground that the hall owners shared the general allergy (the word is ours, not the Mayor's) of Jersey City people toward these plaintiffs.

We are skeptical enough to realize that municipal authorities (like other authorities) are possessed of indirect means of coercion. In fact it was unnecessary for counsel to point this out and in doing so they might very well have referred to previous instances of such tactics.

> "Under the 'architectural police regulations' in Vienna it is technically impossible to build a theater so as to make it a profitable undertaking. Yet new theatres are built and flourish, while old theaters that violate the main principles of the regulations are maintained. The good-natured authorities are willing to close one eye to illegalities, on the tacit understanding that he who profits by such indulgence will not be recalcitrant should the convenience of the state require pliancy on his part. The manager of a theater who should refuse to remove from the playbill a play displeasing to the authorities, or should insist upon the circumstance that the play had been authorized by the censor, might find the sanitary arrangements of his theater declared to

be insufficient by a special commission, or the condition of the ceiling perilous, or the fire exits much too narrow."

The Hapsburgh Monarchy, Wickham Stead, p. 76.

"In most cities, hall licenses may be revoked at any time because of structural defects in the building. An 'understanding' or 'gentleman's agreement' exists in some cities whereby hall-owners submit all programs of public meetings to the police department for its approval.

"In exercising this discretion it is evident that the purpose of the assembly plays the leading role."

The Right of Assembly, 9 N. Y. U. Law Quarterly Review, p. 1, above cited, p. 29-30.

And see also 11 Massachusetts Law Quarterly Rev. 25, *The Inquiring Mind*, Chafee, above cited, Chapter entitled The Freedom of the City, p. 144. Whether this or something like it is the explanation in Jersey City must, in our view, come from the mouths of those who alone have first hand knowledge of it. In any event, the failure for whatever reason, to secure private meeting places emphasizes the importance of the next issue: that of the right of public assembly.

To us the answer to this question is plain. The difficulty, if any, lies in the state of the authorities, a difficulty often encountered in a precedent controlled legal system. If those authorities contained a direct ruling by our highest court, our duty would end there. In our judgment, they do not. We are free therefore to decide the matter upon principle as we see it.

We hope our recital of the history and the rationale (vicariously) of free speech carries conviction. That history and that theory has been recognized in our constitution. The communication of thought, unless you believe in mind-reading, requires some mechanical means. In the case of speech, one needs some place to speak in and some people to listen. The public meeting has been called the

"platform of the poor". Lacking the money or perhaps in Jersey City the goodwill, sufficient to obtain some private place, the would-be orators are forced to resort to publicly owned places.

> "One great obstacle to the right of public meetings has always been the finding of a place of meeting large enough, and not too large, for the purpose of hearing and being heard. This, indeed, is a difficulty which more peculiarly affects the poorest portion of the community, it being always within the power of the wealthy to obtain by purchase or some valuable consideration access to a convenient place if they choose to undertake such preliminary expense."
>
> Paterson, above cited, p. 21.

> "Recognition of the fact that there is no real alternative to use of the streets except complete silence should remove entirely the claim that the city's proprietary interest gives it some special power over public places."
>
> 5 International Juridical Association Monthly Bulletin, Ordinances Restricting Leaflet Distribution, p. 147, 149.

> "Unfortunately, however, these constitutional provisions do not guarantee a place for the people peaceably to assemble, and restrictions on street meetings in this country are consequently as extensive as in England."
>
> Public Order and Right of Assembly, 47 Yale Law Journal, above cited, p. 412.

We are willing to eliminate the streets or squares from such resortable places. We question whether the easement of passage includes the quite inconsistent right to obstruct passage. (sed quaere whether a procession is a passing.) *Public Order*, 8 Pol. Quarterly 7, *Public Meeting and Processions*, 6 Cambridge Law Journal 161, above cited, *Berden v. Wrigley*, 1 K. B. 337. It will be noticed that the authorities cited are all English. For some quite, in our opinion, illogi-

cal reason the American cases do not seem to stress the obvious difference between a street and a park.

We are not willing to eliminate the latter. It seems to us that the purpose of most parks is the recreation of the public. *Archer v. Salinas City,* 28 Pacific 839 (California), *So. Park Commissioners v. Montgomery,* 92 N. E. 910 (Illinois), *Cupallan v. Andrews,* 125 N. E. 502 (New York), *Ramsted v. Carr,* 154 N. W. 195, 200 (North Dakota), *Commissioner v. Hazen,* 56 Atlantic 263 (Pennsylvania), *North Port Wesleyan Grove Camp Meeting Assn. v. Andrews,* 71 Atlantic 1027 (Maine). We include in that word recreation an easement of assemblage. We believe it is not limited to physical recreation (fresh air, sunshine and exercise) but includes mental recreation and therefore the opportunity to impart and receive instruction. We have used the limiting word "most" before parks because we concede that there are parks whose purpose is narrow. Such, for instance, as the Botanic Gardens (flowers) in Sydney, Australia (*Fox v. Allchurch,* [1926] So. Australian State Reports, 384), Soldier's field (athletics) in Chicago (*Coughlin v. Chicago Park Dist.* 4 N. E. 2nd series 1 [Father Coughlin]).

We hold then that a municipality's proprietary right is subject to an easement of assemblage in such parks as are dedicated to the general recreation of the public. We hold also that this easement of assemblage is clearly subject to a municipal right of regulation.' To allow speakers at any place and in any number does not contribute to the enjoyment of the public. This was decided in an Engiish case dealing with public meetings on Clapham Common, dated incidentally, prior to the first of the cases cited in defendants' brief.

> "Secondly, he contended that the common having been 'dedicated to and for the use and recreation of the public as an open and uninclosed space for ever', the board could not prevent the public from assembling there whenever they pleased for the purpose of hearing sermons, or lectures, or addresses, on any subject, religious, political, or otherwise. If this argument were

> sound it would follow that any number of public meetings might be held at the same time in various parts of the common, even to the extent of monopolizing the whole area . . . . . Its object was to secure in perpetuity the common as a place which the public might use as of right for the purpose of recreation, and in order that all classes may at all times share in its enjoyment, the user of the common is necessarily placed under regulations."
>
> *De Morgan v. The Metropolitan Board of Works,* 5 Q.B.D., p. 155, 158.

By the same token the only feasible method of carrying out such regulation is by way of permit. This alone saves the ordinance in the case at bar even if it had been based on the park section of the city empowering act alone (*Laws of New Jersey, 1917 Ch. 152, art. 36, sec. 2 at p. 452*) and had omitted the blood curdling words of the more general power repeated in the ordinance itself.

What is the constitutional scope of this easement of assemblage? Or to put it another way does the right of free assembly bar any regulation of public meetings except the limited proprietary regulation just discussed? Under a literal application of the previous restraint doctrine of Blackstone, it does. We are aware that the Supreme Court has expressed its approval of the Blackstonian theory. *Patterson v. Colorado,* above cited, *Near v. Minnesota,* above cited, *Grosjean v. American Press Co.,* above cited, *Lovell v. Griffin,* above cited. These are, however, not strictly cases of public meetings and we think that they and their doctrine are not consistent with what we have seen to be a limitation implicit in the right of free assembly. This limitation is the sovereign's interest in the public peace. *Liberty of the Press, Speech and Public Worship, Paterson,* above cited, *Dicey's Law of the Constitution,* 4th Ed., above cited, *Restrictions on the Right of Assembly,* 42 Harvard Law Review 265, above cited, *Public Order and Right of Assembly,*

47 Yale Law Review 404, above cited, *The Right of Assembly*, 9 N. Y. U. Law Quarterly Review 1, above cited.

Our decision in the case at bar does not, however, as we see it entail a final decision of this question. For we believe that the justifiable condemnation of previous restraints on public meetings and a salutary interest in the public peace are reconcilable by a procedure that is not being followed in Jersey City. As it is not followed, the invocation of the ordinance against the plaintiff applicants is in violation of the free assembly guaranteed by the First Amendment of the Constitution and must be restrained.

We deem this to be the correct constitutional procedure. Before refusing the permits the municipal authorities must have proof (reviewable, of course, in the courts) that the present applicants at least have spoken in the past in such fashion that audiences similar to those to be reasonably expected in Jersey City have indulged in breaches of the peace. If that proof were made, we think that either a copy of the speech to be currently delivered could be required and censored in the light of the reasonable apprehensions of disorder of "firm and courageous" city officials, or else the speakers could be bound over to keep the peace and be of good behaviour. The adjectives "firm and courageous" will be recognized as those of the law pertaining to unlawful assembly and seem to us for that reason appropriate here. *Halsbury's Law of England*, 2nd Ed. Vol. 9, p. 312, *The Law Relating to Riots and Unlawful Assemblies*, Vol. 35 The Legal Observer 469, *The Law Relating to Unlawful Assemblies*, Vol. 26 The Legal Observer, 545, *Riots, Routs and Unlawful Assemblies*, Vol. 3 American Law Magazine (article 6) 350, *Suppressing of Riots by Military Interference*, Vol. 9 The Law Magazine 66, *International Responsibilities of States*, Vol. 8, *The American Journal of International Law* 802, *Riot—Concert of Action—Acts of Violence by Two of Unlawful Assembly Constitutes 'Riots'*, Vol. 13 Virginia Law Review 329, *The Law Relating to Riots*, A. H. Brodkin, 3rd edition, *State v. Butterworth* 104 New Jersey Law 579.

The practice of binding over although useful is not as common in this country as it is in England.

> "When magistrates are satisfied by evidence that if such persons are allowed to proceed with the proposed meeting a breach of the peace is likely to be caused, they may call upon the persons in question to enter into recognizances on their own behalf and in addition, if the Court thinks fit, to find other persons to enter into recognizances as sureties for them, that they keep the peace or be of good behaviour."
>
> Law of Public Meeting, Mann and Llewellyn, Research by Committee of Haldane Club.

> "Take the case of an organization which has a demonstration with a slogan without question and in fact provokes disorder. The police under the conditions which already exist can say to the promotors next time they come for a permit. 'The last time you had one you put those words up and they caused a row, and if you are going to have this procession you must give an undertaking that you will not have anything of the kind again.' That would be all right, but if the police have to ask for all these emblems, banners and flags to be exhibited and then exercise a censorship, I suggest they would be put in an impossible position."
>
> House of Commons Debates, Vol. 318, p. 163.

And see *Assembly When Unlawful,* 26 Solicitors Journal 689; The *King v. Sandbach, Ex p. Williams* 2 K. B. 192; *Police Powers and Public Meetings,* 6 Cambridge Law Journal 175, above cited. We need hardly add that the record in the case at bar discloses nothing about the happenings at previous meetings addressed by the plaintiff applicants.

We inserted the qualifying "at least" in the last paragraph because it leaves open a much debated question. Should the speaker's words be judged from the standard of a court's view of their effect on an average audience constituted as the particular gathering or should they rather be considered from the aspect of their effect on a say weak-

minded or malicious audience. We must recognize a certain ability to withstand provocation. Otherwise we have not freedom but indifference. Moreover a pandering to possible audiences leads to mob censorship. On the other hand, must blood be shed in the effort to convert those possibly impervious to conversion? The question is again that matter of balance. We agree with the earlier English cases and hold that the speaker's own conduct is the criterion. If he observes the decencies of discussion, he should be given the full protection consistent with the strength of the local guardians of public safety. The question has been much discussed in England. In the case of *Beatty v. Gillbanks*, 9 Q. B. D. 308, dealing with the breaking up of meetings of the Salvation Army by a so-called Skeleton army, the learned justice said:

> "What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants (Salvation Army) and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition, and the question of the justices whether the facts stated in the case constituted the offence charged in the information (unlawful assembly) must therefore be answered in the negative."
>
> p. 314-315.

The doctrine was affirmed in *Wise v. Dunning* [1902] 1 K. B. D., p. 167, where the preventive arrest of a protestant agitator was approved on the grounds that he had used language insulting to the Catholic religion, in neighborhoods inhabited largely by Catholics. In the recent case of *Duncan v. Jones*, [1936] 1 K. B. D., p. 218, the Lord Chief Justice turned the flank of these decisions in upholding an inspector of police (Jones) in preventing Mrs. Duncan from holding a meeting outside an unemployment training center. The evidence showed that there had been disturbances

at previous meetings held by Mrs. Duncan but did not indicate the character of the language used by her. These three cases have been discussed and the last one criticized by a learned author writing in 6 Cambridge Law Journal, above cited, p. 175, Dr. Wade says at page 181 and 179:

> "Nor need the police as regards meetings generally, and apart from the question of obstruction to the highway by street meetings, have greater power than could be prescribed by enacting the distinction between Beatty v. Gillbanks and Wise v. Dunning, whereby police interference is authorized where insulting or abusive language takes place, but is not permitted simply on account of expression of opinion in circumstances which may expose the speaker to attack from outside."
>
> "The case thus leaves the law in the unsatisfactory position that it is for the police to decide whether a political party can organize a meeting in a district where its opponents are known to be hostile. The apprehensions of a single policeman based upon the fears of somebody else may apparently be decisive."

And see also the opinion of the Lord ordinary in the case of *M'Ara v. Edinburgh*, [1913] Session Cases 1059, 1070:

> "The proclamation if effectual would dispense with the necessity of both trial and conviction and would subject a citizen to disabilities merely because the Magistrates in their private room had come to the conclusion that his conduct was calculated to produce obstruction or breach of the peace."

Our position does make past conduct a cause of future restraint. We are aware of the fact that this is censorship. This was pointed out in articles criticizing the decisions of the courts in the cases of *Trinity Methodist Church South v. Federal Radio Co.*, 62 F. (2d) 850, certiorari denied 53 Supreme Court Reporter 317, *KFKB Broadcasting Association v. Federal Radio Commission*, 47 F. (2d) 670 (Dr.

Brinkley's station) and *U. S. v. Burleson,* 255 U. S. 407, the learned authors saying:

> "The only reason that past conduct was a matter of any concern is because it was assumed that future conduct would be the same . . . This is not something resembling censorship, it is censorship in fact, the very essence of it. To say under these circumstances, that because past releases had not in fact been subjected to prior scrutiny, therefore there was no censorship, is a misconception of the practical effect of the decision as well as of what constitutes censorship."
>
> 1 Journal of Radio Law, p. 441, 470.
>
> "It is mere quibbing to say that it is not censorship to refuse the renewal on the basis of past conduct, since the refusal intended to prevent what might be said over the station in the future—the most effective sort of censorship."
>
> 1 Duke Law Journal, p. 49, 50.
>
> "Because the paper had published forbidden matter for the five preceding months, it was likely to continue doing so."
>
> 21 Georgetown Law Journal, p. 35, 161, 186.

and see also *46 Harvard Law Review 987* and *22 Kentucky Law Journal 634.*

Such censorship has been upheld by the United States Supreme Court in the case of the mails (*U. S. v. Burleson,* 255 U. S. 407, above cited; and see also *Lewis Publishing Co. v. Morgan,* 229 U. S. 288) and impliedly in the case of the radio Shuler Broadcasting case, Matter of Shuler, 292 Pacific, 481 (certiorari being refused). In those cases the action sustained went far beyond the view we have here expressed for the allegedly objectionable newspaper and orator were thrown out of the mails and off the air respectively. It is true that mechanical considerations and by definition spot character of news make the submission of advance copy either destructive of efficiency or else creative

of bureaucracy. This is not true of the delivery of speeches. They might suffer in spontaneity but there are those who think that the listening public would welcome the compensating gain in thoughtfulness.

Before proceeding to a consideration of the American cases it may be of interest to make some examination of the way in which the same problem is dealt with in the legal system of the other nations. We cannot and of course do not offer any of this foreign law as a binding constitutional precedent here. We think its citation serves two purposes, both of them at least moderately useful. First, because to learn by that form of experience which is example, whether good or bad, is standard for us erring humans and comparisons whether odious or not are certainly helpful. Second, the practices of government in other countries properly belong in the laboratory of political science which, as we have said, we believe is pertinent to the interpretation of any charter of government written in general terms.

In setting forth the foreign authorities we notice that we have already dealt with the mother country, England. That is because we need hardly say her legal system is directly relevant to ours and to our Constitution. We make only this comment on the law we are quoting. We find the same disagreement as to the proper method of regulating public meetings that exists in our country and in our cases. That division is between the democracies and the autocracies verbam sap.

A Democracies

France.

1. In French:

(a) "A-t-on jamais reglemente le droit de respirer? Le droit de parler et de se reunir lui parait etre due meme ordre. Les abus et les bagarres doivent evidemment etre reprimés et la police qui rode toujours aux abords des meetings se doit d'intervenir en cas de

paroles seditieuses ou menacantes ou si l'on en vient aux coups."

p. 13.

(b) "Il (le législateur) peut exiger une declarat tion prealable, mais il ne peut point subordonner les reunions publiques a une autorisation prealable. Il peut, il doit meme interdire les reunions sur la voie publique, parce qu'elles entraveraient la circulation publique et qu'il peut et doit limiter la liberte de chacun pour protéger la liberte de tous. Enfin, il peut organiser la constatation et la repression des delits pouvant etre commis dans les reunions publiques. S'il va audela, il excede ses pouvoirs, il porte atteinte a la liberte de reunion."

p. 277-278.

Les Meetings—Essai sur les Caracteres Politiques et Juridiques de la Liberte de Reunion en Angleterre by Paul Mousset.

2. TRANSLATED:

(a) Has one ever regulated the right of breathing? The right of speaking and of assembly seems to fall in the same category. Abuses and riotings are manifestly to be suppressed by the police, who are always present at the meetings and intervene whenever seditious or menacing words are used or if there is any fighting.

(b) He (the legislator) can require a preliminary notice but he cannot subject public meetings to a permit. He can, he often should, forbid meetings on the public streets, because they are dedicated to the public passage, and so he should limit the liberty of each person in order to protect the liberty of all. Finally, he can bring about the discovery and repression of crimes likely to be committed at public meetings. If he does

more than that, he goes beyond his powers. He limits the liberty of public assembly..

see also the *Constitution of Spain*, 1931, art. 31, 38.

Ireland, Constitution 1922.

"Art. 9. The right of free expression of opinion as well as the right to assemble peaceably and without arms and to form associations or unions is guaranteed for purposes not opposed to public morality. Laws regulating the manner in which the right of free assembly may be exercised shall contain no political or religious or class distinction."

Brazil.

"In a case decided in 1917 (Accordao No. 4,313, of July 11, 1917), the court held that the police had power to localize the meetings by indicating the place or places where they might be held, and to prohibit them whenever they had adequate grounds to fear that public order would be disturbed or when the purpose of a meeting was manifestly criminal. In such cases the promotors of a meeting may invoke the remedy of the habeas corpus, the court then entering into the question whether the grounds alleged by the police were sufficient to justify their action."

"Against this decision, Ruy Barbosa protested in the federal senate on the ground that it adopted the policy of prevention, forbidden by the constitution, instead of the policy of repression, which limits itself to holding persons responsible for acts performed, in the abuse of their liberties. Thereupon, in a similar case decided in 1919, the supreme court reversed its position and denied the power of the police to designate the place in which the meeting shall be held."

Constitutional System of Brazil, James, p. 148.

B Autocracies

Italy, Constitution of 1848.

"Art. 32. The right to peaceful assembly without arms, is recognized, subject, however, to the laws that may regulate the exercise of this privilege in the interest of the public welfare. This privilege is not applicable, however, to meetings in public places or places open to the public which shall remain entirely subject to police law and regulation."

Germany.

1. Under the Prussian Constitution of 1850.

"Art. 29. All Prussians shall be entitled to meet in closed rooms, peacefully and unarmed, without previous permission from the authorities.

"But this provision does not apply to open-air meetings which shall be subject to whatever restrictions the law may prescribe even with respect to previous permission from the authorities."

2. Under the Weimar Republic.

"Article 123. All Germans have the right to assemble peaceably and unarmed, without notice or special permission.

"Assemblies in the open (freiem Himmel) can be Imperial Statute, be made subject to notice and can be forbidden in case of immediate (unmittelbar) danger to the public safety.

By a decision of the *Reichsgericht* (56 Entscheidungen des Reichsgerichts in Strafsachen, 184) it was said that a requirement of previous permission was inconsistent with this article 123, and void.

3. Under the present Reich.

"The law continued in this posture until 1932, when pursuant to article 48 (2) of the Constitution,

Hindenburg promulgated an emergency decree, providing for police supervision of all public meetings." RGB, 1932, 1, 548.

"In 1933, another emergency decree of Hindenburg's, A. Hitler Chancellor, (RGB, 1933; 1, 35) was passed providing for notice of all open air meetings, for police supervision, for prohibition in case of direct danger, and for complete prohibition upon the order of the Minister of the Interior. A week or so later, an emergency decree suspended Articles 114, 115, 117, 118, 123, 124, 158 of the Constitution, i. e. substantially the whole Bill of Rights" RGB, 1, 1933, 183 Systematische Übersicht Uber 71 Jahrgänge Reichsgesetz blatt 1867-1938.

We return now to our native shores and the cases in our courts. We find that the box-office score seems to be approximately 6 to 3 in favor of unrestricted administrative censorship. *Commonwealth v. Davis*, 39 N. E. 113, (Massachusetts), *Fitts v. Atlanta*, 49 S. E. 793, (Georgia), *Love v. Phelan*, 87 N. W. 785 (Michigan), *People ex rel Doyle v. Atwell*, 133 N. E. 364 (New York), *Duquesne City v. Fincke*, 112 Atl. 130 (Pennsylvania), *People v. Smith*, 188 N. E. 745 (New York). See also *47 Yale Law Journal* 404, p. 413. We do note, however, that the learned Supreme Court of New Jersey failed to mention three cases, *In re Frazee*, 30 N. W. 72 (Michigan), *State v. Coleman*, 113 Atl. 385 (Connecticut), and *Anderson v. Tedord*, 85 So. 673 (Florida). These three cases are those included in our minority and at least squint in the direction which we are proceeding. It is true that some of the cases on the majority side talk feelingly of discrimination and its wickedness. In our view such talk is lacking in realism. We can not find the discrimination necessary for the operation of the privileges and immunities clause of the Constitution on the case at bar and the reported opinions give us the impression that other judges have been similarly baffled. One might suspect or even have a moral certainty but the plain fact is discrimi-

inatory minded city officials do not put it in the newspapers. This thought has been brought out in several of the law review articles previously cited.

> "To subject the right or privilege of assembly to the uncontrolled discretion of an administrative official is to invite discrimination aganst those who held and express theories or ideas repugnant to the community generally."
>
> Limitations on the Right of Assembly, 23 California Law Review p. 180, above cited, p. 192.

> "Unfortunately, no effective means of preventing arbitrary or discriminatory exercise of such power seem available, although it has been suggested that a writ of mandamus might be used."
>
> Restrictions on the Right of Assembly, 42 Harvard Law Review p. 265, above cited, p. 267.

An analysis of these majority cases reveals this situation. In the year 1886 the high court of Michigan struck down an ordinance saying:

> "It is only where power is given to license that permissive action can be left to particular cases. If this were allowed in the case of processions, it would enable a mayor or council to shut off processions of those whose notions did not suit their views or tastes, in politics or religion, or any other matter on which men differ. When men in authority have arbitrary power, there can be no liberty."
>
> In re Frazee, above cited, p. 76.

Ten years later one Davis saw fit to ignore an ordinance of the city of Boston requiring permits to speak on Boston Common. This ordinance also prescribed a permit or license for various other activities such as firing cannons, vending merchandise and giving entertainment. The ordinance was manifestly reasonable and constitutional. It

comes squarely within our theory that parks or commons are for the recreation of the public and would-be speakers as well as would-be cannon shooters and would-be Punch and Judy demonstrators must submit to regulation. Brother Davis was not refused a permit for the excellent reason that he did not ask for one. If he had, he might have been advised with respect to the place at which he should enlighten the citizenry in order that others not interested in his exposition might have an opportunity to enjoy themselves by avoiding him. Mr. Davis' zeal, in the words of Midshipman Easy's commanding officer, led him to speak anyway and to make, by the same token, we respectfully suggest, most of the opinion of the learned Massachusetts Supreme Court dictum. In other words the discussion of the municipal power to forbid speaking in public places absolutely is not necessary to the decision.

The Davis case was appealed to the United States Supreme Court and is found reported in 167 U. S. 43. That august body naturally did not affirm on the opinion below. They did, however, adopt part of the reasoning of the Massachusetts Court. In so far as that reasoning is dictum below it is dictum above. More than that follows from the fact that the decision of the Supreme Court was rendered in 1896. At that time the United States Supreme Court felt that free speech was not protected by action against the states. We discussed this in an earlier portion of this opinion. So in the Davis case we find Mr. Justice White expressly placing his holding on that ground:

> "The Fourteenth Amendment to the Constitution of the United States does not destroy the power of the States to enact police regulations as to the subjects within their control."
>
> p. 47.

Any other language in the opinion becomes in consequence not only dictum but double dictum. It is entitled to the weight attaching to the lightest utterances of the members

of our final tribunal but it is not binding either on us or on them.

The condition of the authorities, then, boils down to this. The Davis case dammed the flow of a stream of precedents that had the earmarks of giving a reasonable easement of assemblage in public places. This is apparent because the Davis case is cited in every one of the subsequent cases holding its way. It appears to be cited furthermore without much internal examination. We find no reference to the matters just discussed. Our interpretation of them may be right or it may be wrong but it is assuredly relevant. If the dictum of the Davis case falls, the cases following it take the same course, and the numerical minority becomes the majority.

Whatever we have said about the regulation of public meetings applies, a fortiori, to the display of placards by pickets or anyone else desirous of persuading the passer-by. The test is the same one of provocation and breach of the peace. Whatever differences exist are in favor of no previous restraint. A placard coming from the pen is easier of confiscation than words coming from the tongue. Spoken words have that quality of excitement or incitement lacking in cold print. Finally, there is a contagion in predetermined gatherings lacking among casual wayfarers. The position of the city official being that placards admittedly harmless in inscription are prohibitable qua placards. This issue need not be resolved and the prohibition of placards must be restrained. It is worthwhile noting that some of the discussions in Parliament on the English Public Order Bill revolve around provocation by placard and such legends on banners as, "Down with the means test", "Down with British imperialism", *House of Commons Debates* above cited.

To put these theoretical matters in more practical form. Our decree will run in favor of the plaintiffs and will enjoin the defending officials of Jersey City from in any way interfering with the plaintiffs in their right 1) to be and move about freely in Jersey City; 2) to distribute leaflets and circulars of a character similar to those being distributed

at the time of the institution of this suit or of a substantially similar character; 3) to address public meetings in the parks of Jersey City subject only to the city's right to carry out the recreational purpose of those parks by arranging convenient times and places; 4) to display placards of the character of those displayed at the time of the institution of this suit or of a substantially similar character in or on the public places of Jersey City. We are not passing upon the claims advanced by the plaintiffs under the National Labor Relations Act. This because we issued our injunction on March 15, 1937 in favor of some of these same plaintiffs and in favor of others in legal positions precisely similar to others of these plaintiffs. That injunction adjudicated the same or substantially, similar issues arising under the National Labor Relations Act, to those of this litigation. Our decision in that matter was appealed to the Circuit Court of Appeals for the Third Circuit and is still undecided in that court. Therefore, whether technically res adjudicata both courtesy and efficiency demand our abstention until we receive enlightenment from on high.

Two concluding matters. We appreciated the cooperation of counsel for both sides, through the sometimes difficult proceeding. We feel that they are trying with us to solve a problem important, as we began by saying, to democracy. We have no final pride of opinion about our own solution. We do offer one admonition. The American tradition of brief writing has always seemed to us a meagre one and preclusive of real research. We suggest that the various bar associations and public libraries contain a wealth of material other than that found in text books and reported cases.

We hope that our failure to mention Jersey City's specific form of allergy has been noticed. It had reference to a supposed doctrinal infection of the plaintiffs or some of them. We offered our court as a humble forum for the purpose of calling witnesses under the fears and safeguards of the judicial process, in order that this ghost, if it is a ghost, might be forever exorcised or that this monster, if it is a

monster, might be finally slain. This offer was not accepted and we are left with hearsay, some of it not single but triple. This hearsay may be relevant on the issue of the mental condition of the officials and people of Jersey City. It is plainly no proof of the ultimate facts. If the plaintiffs or any of them wish or need to be heard in the eyes of Jersey City or of any other part of the United States, they must accordingly seek that cleansing elsewhere. A fact which, incidentally, obviates any consideration of that other cleansing required by courts of equity. *Goldman v. Rayburn,* 36 Pa. County Court Reports, 581; *Friends of New Germany v. Eastmead,* 116 N. J. Equity 487. The doctrine is difficult of application and has been criticized as applied to the obscurities of related sin. *48 Harvard Law Review* 507, *15 Virginia Law Review* 275, *8 Texas Law Review* 307.

Finally let us say this court happens to be as much or more personally allergic to the mentioned infection as the defendants or their constituents. We think it economically unworkable and worse than that we think that the methods seemingly pursued in its propagation are abhorrent to all true believers in democracy. Eugene Lyons, whom we understand to be an experienced and originally sympathetic newspaper reporter ends his most interesting book, *Assignment in Utopia,* in these words:

> "No plan for economic salvation must be accepted if it is diseased with disdain for life. Ultimately Russia will not be judged by how much bread it has given its people—by that standard other countries and other systems may be far more successful—but by how much freedom, self-respect, equality, truth and human kindness it has brought into the world."

We close with the suggestion made by a distinguished British statesman in the course of the Debates on the Public Order Bill several times referred to. He said in speaking about Sir Oswald Moseley's Fascists, "Why make martyrs out of clowns?" and we add wicked clowns at that.

DISCUSSION.

(Filed November 2, 1938.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

EQUITY E-5865.

Committee for Industrial Organization, et al.,
Plaintiffs,

v.

Frank Hague, &c., et al.,
Defendants.

Newark, N. J., Wednesday, November 2, 1938.

Before: HON. WILLIAM CLARK, J.

Appearances:

SPAULDING FRAZER, ESQ., MORRIS L. ERNST, ESQ., DAVID STOFFER, ESQ., BENJAMIN KAPLAN, ESQ., for plaintiffs.

JAMES A. HAMILL, ESQ., CHARLES HERSCHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., JOHN A. MATTHEWS, ESQ., for defendants.

THE COURT: Is there anything before the Court? I suppose, Dean Frazer, you are the moving party.

MR. FRAZER: Well, I didn't understand, sir, that it was in the nature of a motion. I understood that your Honor said you would be glad to have counsel appear before him, and as the agent of the Court, I conveyed that information to my opponents.

We have submitted certain conclusions of law, findings of fact, and the form of a proposed decree. In doing so, we endeavored, in the light of your Honor's opinion, to frame the findings of fact and the conclusions of law, and neces-

sarily the decree based upon them, from the standpoint of what we conceived to be your Honor's wishes under the opinion. Certain matters we naturally have omitted, as we regarded them rather in the nature of dictum than as a matter of finding. I refer particularly to the case of what the press has referred to as "pre-censorship"; and we have no finding of fact in that regard, nor have we any conclusion of law in that regard, nor is it carried in the decree. Aside from that, the matters are, I think, scarcely subject to dispute. They are the uncontradicted evidence of the plaintiffs' case. There being no defense interposed, there was very little dispute. And we have endeavored to summarize as well as we can those portions of the facts which seemed to be relevant to the opinion filed by your Honor, as an act of service to the Court rather than as an expression of our views on some of the mooted questions.

THE COURT: Well, I assume, of course, Dean Frazer, that you are acting under the new Rule 52 of Civil Procedure, which takes the place, as I understand it, of Rule 70 (e)—is it? Yes, Rule 70 (e), which requires——

MR. FRAZER: 70½.

THE COURT: 70½, yes— which requires findings of fact and conclusions of law. I assume, of course, that in any case, where findings of fact and conclusions of law are filed, they relate themselves to the facts of the particular case, and I didn't know that the press had referred to anything in my opinion as "pre-censorship."

MR. FRAZER: Well, as I——

THE COURT: Let me finish.

MR. FRAZER: Pardon me.

THE COURT: I suppose that you have reference to my discussion of the regulation of public meetings.

MR. FRAZER: Yes, sir.

THE COURT: In which I said that it was my opinion that if the decencies of discussion had been observed on past oc-

casions by the speaker, he would be entitled to speak. Of course, in this particular case there was no proof in my view that any of the particular applicants had not observed the decencies of discussion. Therefore, no finding of fact or conclusion of that law on that point was necessary.

I assume that is what you referred to.

MR. FRAZER: Yes; and I didn't wish to put the word "pre-censorship" in your Honor's mouth. It was a convenient way of referring to the references of the press to that portion of your Honor's opinion.

THE COURT: Well, that is the reason I spoke about it, because it was a word that I did not use, and I think I correctly stated what I did say.

MR. FRAZER: And might I say I think there is some difference, as I construe the two rules, between the practice under the old equity Rule 70½ and the present civil procedure rule.

THE COURT: Well, you most kindly referred me to the correct section this morning.

MR. FRAZER: Yes.

THE COURT: And I had a chance to read it.

MR. FRAZER: I think there is this distinction at the present time: There being no requirement for a submission of findings of fact, in order to appeal on the basis of the actual findings, the duty of counsel is somewhat different under the new rule than it was under the old rule. I take it under the old rule it would have been our duty to have asked your Honor definitely to find certain acts. Under the new rule, I take it that it is your Honor's finding, and that counsel, not having to ask for definite findings, is acting more as a servant, may I say, of the Court, aiding him on the record.

I wanted to make that distinction clear, between the old rule and the new rule of civil procedure.

THE COURT: Well, it is a little hard to tell whether the old rule is changed or not. I have been reading it this

morning. It does refer to findings of fact but does not apparently make them mandatory, so far as I can see.

MR. FRAZER: I think it makes them mandatory, sir; but I think you will notice that counsel has the right to appeal although he may not have submitted findings, or may not have made any requests to find. I think therein lies the distinction in the old and the new rule.

THE COURT: Well, in any event, I have here proposed findings of fact and proposed conclusions of law, which, as I understand it, have not been until this time furnished to your opponents. Is that correct?

MR. FRAZER: No, sir; they were only completed last night at about eleven-thirty; and I don't know whether there was an available copy for my opponents or not.

THE COURT: Have you got them now, Mr. Hamill?

MR. HAMILL: No, if your Honor please, this of course is a notice of motion. We are here in response to a notice of motion served on me by Mr. Frazer, on me as attorney for the defendants, by Mr. Frazer, attorney for the plaintiffs. And I was rather surprised to hear him say that it wasn't a motion. It was in response to this notice of motion that we presented ourselves here this morning, and present ourselves here now.

Now, there was a colloquy between the Court and counsel as to the content of the conclusions of law and statement of facts presented by counsel. Unfortunately we cannot participate in it for the reason that we did not get a copy of the conclusions of law and findings of fact which counsel for the other side has presented to the Court. Now this is a very important case. I need not expand upon that phase of the matter; and it is a case which has occupied the Court for weeks; one of great public interest, in which great fundamental rights of the American people are involved, particularly the rights of these defendants as public officers. Now, we contend that we should have been served

with copies of the statement of facts and of the conclusions of law; and we ask now that we receive permission to study them and find out what comment or suggestion or criticism we have to make on them. And this will require time. I would ask your Honor for a week, because that would be none too long, but I understand that under the rules I am restricted, of course, to five days; and therefore I ask that we receive a copy of the form of the decree, the conclusions of law and the statement of facts, and that we have five days to study them, and then come back here and make such suggestions or comments or criticisms or objections regarding them as to us may seem proper.

THE COURT: Dean Frazer, will you give them copies right away?

MR. FRAZER: Yes, sir. We were having some extra copies made. I am not certain whether we have any complete ones here. But might I ask Mr. Hamill, sir, whether the defendants have prepared any statement or findings of facts?

MR. HAMILL: No; we are not the moving parties in this case, and we did not.

MR. FRAZER: Well, I think Mr. Hamill and I disagree as to what the practice is. I gave him not a notice of a motion but a statement that we would appear before your Honor for the purpose of settling the statement of facts and the conclusions of law, and also the final decree. I do not understand that under the rule it is our duty, since we are absolved by the rule itself from the necessity of asking for findings, to submit to opposing counsel such findings. I regard them as a mere aid to the Court; and the act which we performed in preparing these is an act which was as well within the power of the defendants to have done also. I am somewhat surprised that they haven't made available to your Honor their interpretation of the facts in the case in view of your Honor's opinion. That is what we endeavored to do, and we didn't feel that it was in the nature

of a controversial matter between us, but rather as an aid to the Court.

MR. HAMILL: Now, I am very, very——

THE COURT: Well, let's not——

MR. HAMILL: I merely want to make a remark. I am very sorry for the solicitude and dolefulness of counsel for the plaintiffs over our failure to submit a copy of the same papers, or a copy of the conclusions of law and a statement of facts, and the decree. While that may be the practice, it is not the positive practice. I regret, of course, that we didn't call Mr. Frazer into conference with us, but while they have taken two or three sides all through the trial, I suppose that at the end he would remain with the plaintiffs. And so——

THE COURT: Mr. Hamill, you remember what I said about "verbal amenities."

MR. HAMILL: Well, my learned friend——

THE COURT: You remember what I said in my opinion about "verbal amenities."

MR. MATTHEWS: I do.

MR. HAMILL: Well, I am giving you now an illustration of what would be a very illustrative "verbal amenity." But at any rate, we ask for time in order to save the time of the Court and to refrain from indulging in argument, which would lead to nothing practical. I repeat my motion and request before the Court that we receive five days for the purpose of studying the papers presented by counsel, by the attorney for the plaintiffs, Dean Frazer, and that then, at the end of five days, the Court determine what are the facts established in the case, what are the conclusions that should be drawn, the conclusions of law, and what the form of the decree should be.

THE COURT: Well, as I read the practice, Mr. Hamill, I think it is the duty of the Court to make the findings of

fact and the conclusions of law, and of course enter such decree as he may think appropriate and just. Naturally, the Court is glad to have the assistance of counsel for both sides. It has already had the assistance of counsel for the prevailing party, which probably is appropriate, as they were the prevailing party. Therefore it is the Court's ruling that before midnight on Friday night you submit such criticisms of these findings or such alternative findings both of fact and conclusions of law, such criticisms of the decree—of course, not a substitute decree, but such criticisms of the decree proposed, as you may see fit. The Court will then immediately proceed to draw up its own findings of fact, conclusions of law, and decree, with, as I say, the gladly received assistance of counsel for both sides.

MR. FRAZER: Might I suggest, in following out your Honor's reference to the amenities, we have just served our opponents, or given to our opponents—I don't wish to use the word "served"—with much pleasure copies of the papers which we have handed to your Honor, and I would appreciate it very much if our opponents would let us have the advantage of their contribution to the matter.

MR. MATTHEWS: At the same hour that you gave yours to us?

MR. FRAZER: Perhaps. You mean at 2:15?

MR. HAMILL: In other words, Dean Frazer did with great grace something he would have to do out of necessity. But we, however, will not delay so long in presenting our criticisms to him.

THE COURT: Now, can the Court add one more "verbal amenity" and repeat its thanks to counsel for both sides, expressed in its opinion, for their co-operation in trying to solve this problem.

The Court is adjourned.

MR. FRAZER: Before the Court adjourns, might I ask when we might anticipate your Honor's actual action?

THE COURT: I shall work with as great expedition as possible.

MR. HAMILL: Before midnight on Friday night.

MR. FRAZER: No, I mean the action of his Honor.

THE COURT: With as great expedition as possible. I shall break my custom and be here on Saturday, in other words.

OBJECTIONS TO THE FORM OF PROPOSED DECREE.

(Filed November 5, 1938.)

The defendants respectfully object to the form of the decree proposed by the plaintiffs upon the ground that the provisions therein contained not only go beyond the findings and conclusions of the Court in the opinion filed by the Court, but have in many respects entirely changed those findings and conclusions and decrees relief to which they are not entitled under the opinion.

The defendants respectfully submit that the plaintiffs at most are entitled to injunctive relief in accordance with the definite conclusions expressed by the Court on page 63A of the Court's opinion. The Court states:

> "To put these theoretical matters in more practical form. Our decree will run in favor of the plaintiffs and will enjoin the defending officials of Jersey City from in any way interfering with the plaintiffs in their right 1) to be and move about freely in Jersey City; 2) to distribute leaflets and circulars of a character similar to those being distributed at the time of the institution of this suit or of a substantially similar character; 3) to address public meetings in the parks of Jersey City subject only to the city's right to carry out the recreational purpose of those parks by arranging convenient times and places; 4) to display placards of the character of those displayed at the time of the

institution of this suit or of a substantially similar character in or on the public places of Jersey City."

Defendants do not admit that the plaintiffs are entitled to any injunctive relief whatsoever and directing the Court's attention to the specific matters suggested as proper subjects of injunctive relief, we contend:

1. That an injunction enjoining the defendants from interfering with the plaintiffs' right to be and move about freely in Jersey City is not justified because there was no evidence in the case that the defendants at any time interfered with plaintiffs' right to be and move about freely in Jersey City.

2. No decree should be issued against the defendants interfering with the distribution of leaflets and circulars because the evidence conclusively established that since the Griffin case the defendants have not interfered and moreover testified that they will not interfere with the distribution of leaflets and circulars.

3. If an injunction is to issue against the defendants restraining them from prohibiting meetings in public parks, they should be given the right to adopt the procedure prescribed by the Court on page 50 of the Court's opinion.

4. The defendants should not be restrained from interfering with the displaying of placards because that matter was not seriously urged nor argued by the parties in this case.

5. The best example of the plaintiffs' attempt to exceed the terms of the opinion may be found at paragraph 4 of the proposed decree in which the plaintiffs provide that unless the defendants adopt a policy of prohibiting public speaking at all times in the streets of Jersey City that the same provisions with regard to the issuing of permits in parks must be applied to the issuing of permits in the streets of Jersey City. This proposed term is nowhere to be found in the opinion of the Court.

The defendants in making the comments and objections to the form of the decree hereinabove set out, do so merely to point out to the Court the inaccuracy of the form of the decree submitted by the plaintiffs and the comments and objections are in no wise to be construed as a waiver of defendants' objections to the substance of the proposed decree or of their right to appeal therefrom.

JAMES A. HAMILL,
Attorney for Defendants.

COMMENTS AND OBJECTIONS TO FINDINGS OF FACT SUBMITTED BY PLAINTIFFS.

(Filed November 5, 1938.)

It has been impossible, because of the insufficient time, to check the testimony referring to each of the proposed findings submitted by the plaintiffs. For that reason the defendants must content themselves with making the following comments without specific reference to the liber and page of the record.

Our comments are directed to the paragraphs in the same order in which they have been submitted;

1. There was no evidence as to the purposes of the CIO, nor did the evidence disclose that all of the individual plaintiffs were engaged in labor organizational activities in Jersey City.

2. There was no evidence as to the purposes of the A. C. L. U.

3. There was no evidence that Mayor Hague has general supervisory powers over all city departments, or that his policies are the policies of the Director of Public Safety.

4. There was no evidence that Mayor Hague publicly stated his opposition to the plaintiffs or the number of associations affiliated with the plaintiffs prior to November 29, 1937.

5. The findings contained in paragraph 5 are not within the scope of the pleadings.

6. No evidence to sustain the findings in this paragraph.

7 (a) No evidence to sustain the findings in this paragraph.

(b) No evidence to sustain the findings in this paragraph.

(c) No evidence to sustain the findings in this paragraph that the exclusion of plaintiffs was pursuant to the unrestricted judgment of the defendants or their police.

8. The evidence cannot justify the findings in this paragraph, particularly because even if the evidence can be believed there was only one instance of any alleged surveillance of any union headquarters. Further, the findings, with regard to searching automobiles, cannot be justified in view of the testimony that searching resulted in the arrest of four (4) members of the CIO who had a gun in their possession.

9. No evidence to sustain the findings in this paragraph.

10 (a) This finding is only partially justified by the evidence because the evidence is quite clear that after the pronouncement by the Supreme Court of the United States in the Griffin case, the defendants did not enforce the city ordinance prohibiting the distribution of circulars.

(b) The finding in this paragraph cannot be justified because the distribution of circulars occurred prior to the Griffin decision.

(c) This finding can only be applicable to the period prior to the Griffin decision.

(d) No comment.

(e) No evidence to justify this finding.

(f) No evidence to justify this finding.

11 (a) No evidence to justify this finding.

(b) No evidence to justify this finding.

(c) No evidence to justify this finding.

12 (a) No Comment.

(b) No evidence to justify this finding.

(c) No evidence to justify this finding.

13 (a) No evidence to justify the finding of this paragraph. On the contrary the testimony clearly establishes that the defendants enforced the ordinances of the city in strict conformity of the provisions of such ordinances.

(b) The finding of this paragraph is not justified by the evidence. On the contrary there was no evidence of consultation of the Director of Public Safety with other defendants prior to denial of permits.

(c) No comment.

(d) No evidence to justify this finding.

(e) No evidence to justify this finding.

(f) No evidence to justify this finding.

(g) No evidence to justify this finding.

(h) No evidence to justify this finding. We also respectfully submit that this finding is couched in such language as to lead to unfair conclusions.

(i) No evidence to justify this finding.

(j) No evidence to justify this finding.

(k) There is no proof justifying the conclusion of this paragraph.

(l) No comment.

(m) This finding is not justified by the evidence, but, on the contrary, there was proof concerning the acts therein alleged.

(n) No evidence to justify this finding.

(o) This finding is not justified by the evidence but, on the contrary, there was proof concerning the facts therein stated.

(p) This finding is not justified by the evidence but, on the contrary, there was proof of the facts alleged in this paragraph.

(q) No evidence to justify this finding.

14(a) No justification for the finding contained in this paragraph. The fact is that the testimony amply discloses that searches are made in order to apprehend criminals and prevent the commission of crime.

(b) No evidence to substantiate the finding in this paragraph. The fact is, in the entire record, only one car of the plaintiffs' was searched and that car bore a Pennsylvania license and the action of the occupants was sufficient to arouse suspicion of the police officer who made the search.

15. No evidence to justify this finding.

16. No evidence to justify this finding.

17. No evidence to justify this finding. The testimony further discloses that there is no justification for a conclusion with regard to the future conduct of the defendants.

18. No evidence to justify this finding.

19. No evidence to justify this finding.

20. No evidence to justify this finding.

21. The record discloses that the allegations of the second separate defense were fully supported by the evidence.

OBJECTIONS AND COMMENTS TO THE PROPOSED CONCLUSIONS OF LAW.

(Filed November 5, 1938.)

1. No comment.

2. The conclusions contained in this paragraph are not justified by the evidence in this case.

3. The conclusions contained in this paragraph are not justified by the evidence in this case.

4. The conclusions contained in this paragraph are not justified by the evidence in this case.

5. The conclusions contained in this paragraph are not justified by the evidence in this case.

6. The conclusions of this paragraph cannot be justified because the evidence discloses that the defendants have never interfered with lawful, peaceful picketing.

7. No comment.

8. The Ordinance of April 15, 1930 has no reference to placards.

9. This conclusion of law is contrary to the Court's opinion.

10. Such a conclusion of law is unjustified from the evidence.

11. This conclusion of law is not justified from the evidence in this case.

12. This conclusion of law is not justified from the evidence in this case.

13. No comment.

14. The evidence in the case clearly established that the plaintiffs have an adequate remedy at law that they have not established a cause of action entitling them to relief in this court and that they are debarred from relief by acts

heretofore performed by them and therefore come into court with unclean hands.

15. Plaintiffs are not entitled to an injunction against any of the defendants in this case.

JAMES A. HAMILL,
Attorney for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed November 7, 1938.)

FINDINGS OF FACT.

A. PARTIES.

1. Plaintiff Committee for Industrial Organization is a voluntary unincorporated committee having its principal office in the District of Columbia. Plaintiffs Steel Workers Organizing Committee, United Electrical Radio and Machine workers of America, and United Rubber Workers of America, are voluntary unincorporated labor organizations affiliated with plaintiff Committee for Industrial Organization. Plaintiff William J. Carney is director for the State of New Jersey of plaintiff Committee for Industrial Organization, and plaintiffs William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney and Daniel J. Foley are field representatives of the Committee for Industrial Organization under the supervision of plaintiff William J. Carney.

2. Plaintiff American Civil Liberties Union is a membership corporation having its principal office in the City of New York.

3. Defendant Frank Hague is Mayor of the City of Jersey City, defendant Daniel J. Casey is Director of Public Safety of Jersey City, defendant Harry Walsh is Chief of Police of Jersey City, and defendant The Board of Commissioners of Jersey City is the governing board of Jersey

City. Defendant Frank Hague, as mayor, has general supervisory powers over all city departments and by his admission and in fact the policies of these departments, including the policies of the department of public safety, are his policies.

B. The Purposes of the Parties.

1. Plaintiffs, the Committee for Industrial Organization, Steel Workers Organizing Committee, United Electrical Radio and Machine Workers of America, and United Rubber Workers of America, were established and are maintained for the purpose of bringing about the organization as labor unions of unorganized workers in various industries and with the further purpose of causing said labor unions to exercise the normal and legal functions of labor organizations such as collective bargaining with respect to the betterment of wages, hours of work and other terms and conditions of employment.

2. Plaintiff, American Civil Liberties Union, was established and is maintained for the purpose of taking such measures as it deems lawful and essential for the enforcement of the rights secured by the First Amendment and the Fourteenth Amendment of the Constitution of the United States. The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. Defendants, Frank Hague, Daniel J. Casey and Harry Walsh, were elected or appointed and are in office for the purpose of taking part in the administration of the government of the City of Jersey City.

4. The purposes of the plaintiffs above set forth are in the letter and spirit of our Constitution and laws and of the theory of our democratic institutions.

5. There is no competent proof that the plaintiffs or any of them had any other purposes and more particularly there is no competent proof that the plaintiffs or any of them incited or advocated the overthrow of the government of the United States or the State of New Jersey by force of violence or incited or advocated the commission of any other acts in violation of the laws of the United States or the State of New Jersey.

C. Liberty of the Person.

1. The defendants acting in their official capacities have adopted and enforced the deliberate policy (a) of excluding and removing from the limits of Jersey City various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs, (b) of exercising personal restraint over various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs and (c) of interfering with the right of locomotion on and the free access to public streets, highways, thoroughfares, parks and places of the City of Jersey City of various agents of the plaintiffs Committee for Industrial Organization and American Civil Liberties Union and various persons acting in sympathy or in concert with said plaintiffs.

2. This exclusion, removal, personal restraint and interference has been carried out by force and violence and without the consent of and contrary to the will of certain of the individual plaintiffs, various agents of the plaintiffs, Committee for Industrial Organization and American Civil Liberties Union and varous persons acting in sympathy or in concert with them, although all of those persons were at the time of such exclusion, removal, personal restraint and interference acting in an orderly and peaceable manner.

3. This exclusion, removal, personal restraint and interference of persons by force and violence is carried out

by members of the police force of Jersey City on their own administrative fiat without authority of law and without bringing the persons, excluded, removed, personally restrained and interfered with as speedily as is reasonably possible before any judicial officer in order that such persons may be afforded a judicial hearing or day in court.

D. Liberty of the Mind.

Circulars, Leaflets and Handbills.

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing any circulars, leaflets or handbills and more particularly Plaintiffs' Exhibit No. 1 (handbill), No. 4 (leaflet), No. 7 (circular), and No. 32 (circular) in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City passed January 22, 1934.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The circular, leaflets and handbills whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the circulars, leaflets and handbills thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of

circulars, leaflets and handbills by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

Placards

1. The defendants, acting in their official capacities, have adopted and enforced the deliberate policy of preventing the plaintiffs and those acting in sympathy or in concert with them from distributing placards in or about the streets, highways, thoroughfares or other public places of the City of Jersey City, and in so doing they have purported to rely on an ordinance of the City of Jersey City adopted February 19, 1935.

2. This prevention is carried out by members of the police force of Jersey City by force and violence and without the consent of and contrary to the will of the plaintiffs and those acting in sympathy or in concert with them.

3. The placards whose distribution was thus prevented were in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) or in other respects objectionable.

4. The distribution of the placards thus prevented is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

5. There is competent proof that the defendants threatened to pursue the policy of preventing the distribution of placards by the plaintiffs and those acting in sympathy or in concert with them on the public streets, highways, thoroughfares and places of the City of Jersey City.

E. Public Meetings.

1. The defendants in their official capacities have adopted and enforced the deliberate policy of forbidding the

plaintiffs and persons acting in sympathy or in concert with them, from communicating their views to the citizens of Jersey City through the holding of meetings or assemblies in the open air and at public places.

2. On or about December 17, 1937, plaintiff American Civil Liberties Union duly applied under and pursuant to the ordinance of the City of Jersey City adopted April 16, 1930, for a permit to hold an outdoor assembly in a public place in the City of Jersey City, to be addressed by Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst; and on or about December 23, 1937, plaintiff Committee for Industrial Organization similarly applied for a permit to hold an outdoor assembly to be addressed by Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler. Said applications were severally denied by defendant Daniel J. Casey upon consultation with and approval of the other defendants herein.

3. There is no competent proof that the parks of Jersey City or any of them are dedicated for purposes other than the general recreation of the public.

4. There is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to.

5. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications of the permits above referred to at which said public meetings or assemblies any breach of the peace whatsoever had occurred.

6. A fortiori there is no competent proof that the proposed speakers or any of them at the meetings applied for by said plaintiffs referred to in Subdivision 2 of E hereof had ever spoken at any public meetings or assemblies in the open air and at public places previous to the applications for the permits above referred to at which said speakers or any of them had either in their choice of words or in their manner of uttering the words chosen violated the reasonable canons of decent discussion or given reasonable apprehension to believe that breaches of the peace would result from the utterance of the said words.

7. There is competent proof through Plaintiffs' Exhibits Nos. 10 and 11 that the City of Jersey City has granted permits various persons other than the plaintiffs proposing to speak at meetings in the public streets of the said city.

F. JURISDICTIONAL ALLEGATIONS.

1. The rights of the plaintiffs and each of them, interfered with and frustrated by the defendants, above set forth, have a value as to each plaintiff in the excess of the sum of $3000, exclusive of interest and costs.

2. The enforcement of the defendants' policies above set forth, as against the plaintiffs herein, results in irreparable damage to them and the threat of continued enforcement of said policies against them involves a threat of manifold and repeated prosecutions for alleged offenses and manifold and repeated invasions of their rights.

3. There is no competent proof that the plaintiffs Committee for Industrial Organization and American Civil Liberties Union are such organizations or that the individual plaintiffs have so conducted themselves as to forfeit the protection of a court of equity.

CONCLUSIONS OF LAW.

1. The Court has jurisdiction over this suit under Section 24 (1) of the Judicial Code (28 U. S. C. A., Section 41 (1), and under Section 24 (14) of the Judicial Code (28

U. S. C. A., Section 41 (14), and under Section 24 (12) and (14) of the Judicial Code (28 U. S. C. A., Section 41 (12) and (14).

2. The defendants' official policy and acts respecting exclusion, removal and personal restraint are in violation of Section 1, and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the interstate commerce clause of Article 1, Section 8 of the Constitution of the United States.

3. The defendants' official policy and acts respecting interference, free access to, locomotion and communication of thoughts on the public streets, highways, thoroughfares, parks and places of the City of Jersey City are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The defendants' official policy and acts respecting distribution of literature on the public streets, highways, thoroughfares, park and places are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City, passed January 22, 1924, under which the defendants have purported to act, is, with respect to such distribution of literature, held to be void, unconstitutional and of no force or effect.

5. The defendants' official policy and acts respecting placards are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance of the City of Jersey City adopted February 19, 1935, under which the defendants have purported to act, is held to be void, unconstitutional and of no force or effect.

6. The defendants' official policy and acts respecting public assemblies are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and the ordinance

of the City of Jersey City, adopted April 15, 1930, under which the defendants have purported to act, is in its application void, unconstitutional and of no force or effect.

7. The plaintiffs herein have established and proved a cause of action under the Constitution of the United States, and under Section 43 of Title 8 of the United States Code, and under Section 47 (3) of Title 8 of the United States Code, reinforced by Section 51 of Title 18 of the United States Code.

8. The separate and distinct defense in point of law set forth in the defendants' answer herein, to the effect that certain of the defendants were improperly joined as individuals, is held to be insufficient in law upon the face thereof.

9. The allegations contained in the second paragraph added to the defendants' answer by their amendment to answer are held not to constitute a valid defense and to be insufficient in law as a defense upon the face thereof.

10. The plaintiffs have no adequate remedy at law, and have established a cause of action entitling them to relief in this court of equity, and are not debarred from such relief by any acts heretofore performed by them, and do not come into this court of equity with unclean hands.

11. The plaintiffs are entitled to a permanent injunction against defendants in terms and form as in the subjoined judgment and decree.

WILLIAM CLARK,
U. S. D. J.

FINAL JUDGMENT AND DECREE.

(Filed November 7, 1938.)

It is on this seventh day of November, 1938, ORDERED, DECREED and ADJUDGED as follows:

The defendants Frank Hague individually and as Mayor of Jersey City, Daniel J. Casey, individually and as Director of Public Safety of Jersey City, Harry Walsh, individually and as Chief of Police of Jersey City, the Board of Commissioners of Jersey City, and the agents, servants, employees, deputies, and officers of the defendants and each of them, and all persons associated with or under the direction, supervision or control of the defendants or any of them are hereby perpetually enjoined and restrained:

A. LIBERTY OF THE PERSON.

1. From directly or indirectly excluding or removing the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them from the City of Jersey City.

2. From directly or indirectly exercising any personal restraint over the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them except in so far as such personal restraint is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

3. From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right of free access to and locomotion on the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in

so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law.

B. Liberty of the Mind.

1. Speaking other than at public meetings.

From directly or indirectly interfering with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them in their right to communicate their thoughts to other persons in and about the public streets, highways, thoroughfares, parks and places of the City of Jersey City except in so far as such interference is in accordance with any right of search and seizure and any right of arrest and removal as speedily as is reasonably possible before a judicial officer under existing law and except further this paragraph has no bearing upon the right of the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them to speak at public meetings which right is hereinafter dealt with.

2. Circulars, leaflets and handbills.

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants, or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the circulation or distribution by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City of pamphlets, circulars, handbills, emblems or any written or printed matter whatsoever; provided that (1) the said circulars, leaflets and handbills are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451), and provided (2) that the distribution of the said circulars, leaflets and hand-

bills is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451).

3. Placards.

From interfering directly or indirectly with the plaintiffs or any of them, or the agents, servants or employees of, or persons acting in sympathy or in concert with the plaintiffs or any of them, in the carrying of, or the display by them to persons on the public streets, highways, thoroughfares, parks and places of the City of Jersey City, of placards, signs or any written of printed matter whatsoever, whether by walking to and fro with such written or printed matter affixed to their persons, or held in the hands, or otherwise; provided that (1) the said placards, signs or any written or printed matter whatsoever are in no respect obscene, offensive to public morals or an advocacy of unlawful conduct (Lovell v. Griffin, 303 U. S. 444 at 451) and provided (2) that the distribution of the said placards, signs or any written or printed matter whatsoever is carried out in a manner consistent with the maintenance of public order and not involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets (Lovell v. Griffin, 303 U. S. 444 at 451.

4. Public Meetings.

(a) From placing any previous restraint upon or in any other manner whatsoever directly or indirectly interfering with the plaintiffs or any of them in respect to the holding of meetings or assemblies in the open air and in parks dedicated for the purposes of the general recreation of the public provided that an application for a permit to hold such meetings by or on behalf of said plaintiffs or any of them has been made three days in advance of such meetings and provided further that such permit may be refused these plaintiffs or any of them only for the reason that the

particular time or place designated in the application is in reasonable conflict with the public recreational purposes of said parks.

(b) From refusing to or withholding from the said plaintiffs or any of them applications for said permits as hereinabove provided such protection at said meetings or assemblies as is necessary to secure to said plaintiffs or any of them the opportunity to hold such meetings without interference from or interruption by such persons as may be present at said meetings provided only that such protection is reasonably consistent with the ability of the defendants to carry out their obligations in regard to the safety of the residents of Jersey City and provided further that the duty of the defendants to afford such protection to the holding of such meetings or assemblies as may be necessary for their peaceful continuance may be terminated by words or conduct of the plaintiffs or any of them in violation of existing law.

(c) From continuing their heretofore expressed refusal to grant permission to Congressman Maverick, Congressman O'Connell, Congressman Allen and Morris L. Ernst, and Congressman O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler upon applications dated December 17 and 23, 1937, respectively, and from continuation their heretofore expressed refusal to grant those said named speakers all the rights set forth in the preceding two paragraphs of this decree for injunction.

(d) From refusing to the plaintiffs or any of them the rights set forth in the three preceding paragraphs of this decree for injunction in so far as such rights may be sought with respect to public meetings on any of the public streets, highways, thoroughfares or places of the City of Jersey City (other than public parks) and unless and until the defendants acted in their official capacities adopt and enforce the deliberate policy of forbidding meetings of any kind on any of the public streets, highways, thoroughfares

or places of the City of Jersey City provided that the rights of the plaintiffs or any of them to hold meetings on the public streets, highways, thoroughfares or places of the City of Jersey City be held subject to a reasonable interpretation by the defendants of the acknowledged easement of public passage over any of the said public streets, highways, thoroughfares or places of the City of Jersey City.

5. FORMAL.

From ordering, commanding, directing, assisting, aiding or abetting in any manner whatsoever any person to commit or attempt to commit any of the things enjoined by this decree, or not to do anything required by this decree to be done.

WILLIAM CLARK,
U. S. D. J.

November 7, 1938.

NOTICE OF APPEAL.

(Filed November 7, 1938.)

Notice is hereby given that the defendants herein appeal from the whole of the final judgment and decree entered herein on the seventh day of November, 1938, to the United States Circuit Court of Appeals for the Third Judicial Circuit.

JAMES A. HAMILL,
Attorney for Defendants.

Dated November 7, 1938.

PROCEEDINGS AT TRIAL.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

IN EQUITY.

Committee for Industrial Organization, Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America, United Rubber Workers of America, William J. Carney, William J. Traynor, William P. McGinn, Samuel Macri, James P. Sweeney, Daniel J. Foley and American Civil Liberties Union,
Plaintiffs,

v.

Frank Hague, Individually and as Mayor of Jersey City, Daniel J. Casey, Individually and as Director of Public Safety of Jersey City, Harry Walsh, Individually and as Chief of Police of Jersey City, and the Board of Commissioners of Jersey City,
Defendants.

Appearances:

SPAULDING FRAZER, ESQ., MORRIS L. ERNST, ESQ., DAVID STOFFER, ESQ., BENJAMIN KAPLAN, ESQ., for the plaintiffs;

JAMES A. HAMILL, ESQ., CHARLES HERSHENSTEIN, ESQ., EDWARD J. O'MARA, ESQ., JOSEPH C. GLAVIN, ESQ., for the defendants.

Before HON. WILLIAM CLARK, *J.*, at the Post Office Building, Newark, New Jersey, on Wednesday, June 1, 1938.

THE COURT: All right, gentlemen.

MR. HAMILL: Do we understand the case is called, your Honor?

THE COURT: Yes, it is, Mr. Hamill.

MR. HAMILL: I now move for a dismissal of the bill of complaint filed in this cause and will present my motion.

THE COURT: Is it in writing?

MR. HAMILL: Paragraphs——

THE COURT: Is it printed? Is it typewritten?

MR. HAMILL: It is typewritten, your Honor.

THE COURT: Could you hand me a copy?

MR. HAMILL: Yes.

THE COURT: You can state it but I can follow it from a copy.

(Copy of paper handed to the Court.)

MR. FRAZER: Have you an extra copy for us?

MR. HAMILL: No, we haven't. We only have two copies.

Paragraphs 1 to 4 of the bill of complaint state that the bill of complaint is filed by the CIO, a voluntary committee of labor organizations, the Steel Workers Organizing Committee, a voluntary organization affiliated with the CIO, the United Electrical Radio and Machine Workers of America, an affiliate of the CIO, a national unincorporated labor organization, the Union Rubber Workers of America, an affiliate of the CIO, also an unincorporated labor organization, William J. Carney, a director of the CIO, five individual field representatives of the CIO, and the American Civil Liberties Union, a membership corporation organized to protect the rights of freedom of speech, the press and the assembly.

Paragraph 5 states that the defendants are Frank Hague, Mayor, Daniel J. Casey, Director of Public Safety, Harry Walsh, Chief of Police, and the Board of Commissioners. The members of the Board of Commissioners are not named.

Paragraphs six and seven. It is alleged that the suit is of a civil nature in equity arising under the Constitution

and the amount in controversy exceeds $3000. That the suit is brought to redress the deprivation of the rights and privileges secured by the Constitution and for the equal rights of citizens.

Paragraph eight. The first charge in the bill is that the defendants deny to the plaintiffs the right to hold lawful meetings upon the allegation that the plaintiffs were Communists or a Communistic organization and were therefore required to obtain a permit under the 1920 ordinance. It alleges the ordinance is invalid.

Paragraph nine of the bill charges that the policy of the defendants is in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings—I would like to emphasize that last statement—"in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings."

Paragraph ten. In order to test the refusal to grant the CIO a permit, the plaintiff American Civil Liberties Union attempted to rent a meeting hall, but were unable to procure the same.

Paragraph eleven. In furtherance of the unlawful plan and conspiracy to deprive certain workers, labor organizations and others of their civil rights, the defendants announced they would not permit picketing in cases of labor disputes except for——

THE COURT: Mr. Hamill, are you going to read it all?

MR. HAMILL: Yes.

THE COURT: Then you do not have to stand while doing so.

MR. HAMILL: Thank you, your Honor.

——except where a bona fide dispute or justifiable strike was involved and would eject persons considered undesirable. On numerous occasions they have carried these deportations into effect.

Paragraphs twelve and thirteen. Prior to November 29, 1937, defendants notified the CIO they would not be

permitted to distribute leaflets pursuant to circular distribution ordinance. Nevertheless, plaintiffs announced they would distribute the circulars on November 29, 1937; that they had headquarters at No. 76 Montgomery Street and on the morning of November 29, 1937, police officers stopped and attempted to turn back CIO members; that individual plaintiffs and their automobiles were searched and CIO literature confiscated; that the distributors were forced to leave by ferry boat. Some were arrested. That the distributors returned to their headquarters at No. 76 Montgomery Street for the purpose of resuming the distribution, but were prevented by the police to leave the building. They were then transported to various points outside of Jersey City.

Paragraph fourteen. That since November 29, 1937, the unlawful activities of the defendants continued to date; that the CIO has been prevented from continuing its organizational activities in Jersey City; that on December 27, 1937, Mayor Hague publicly issued a false statement to the effect that the object of the CIO is to crush, by terrorism.

Paragraphs fifteen and sixteen. On December 19, 1937, plaintiff, Carney, issued a statement of his intention to hold a CIO outdoor meeting, but a permit was refused; that on December 17, 1937, the American Civil Liberties Union applied for a permit for an open air meeting but was refused a permit.

Paragraphs seventeen and eighteen. Individual plaintiffs are employees of the CIO and are desirous of informing employees of industries of their rights; that all the activities of plaintiffs are to be carried out in a peaceful, law-abiding manner, but that defendants, acting unlawfully, have committed the aforesaid illegal acts for the purpose of preventing plaintiffs from the privilege of renting meeting places, using the streets of the city in the same way as others and from holding public meetings.

Paragraph nineteen. Plaintiff's charge that defendants have systematically discriminated against the plaintiffs in the application of the city's ordinances.

Paragraph twenty alleges that the activities of the defendants have been—I emphasize that—pursuant to an unlawful conspiracy to injure, oppress, threaten and intimidate the citizens of America, including the plaintiffs, with intent to prevent their exercise of their rights and privileges secured by the Constitution.

Paragraph twenty-one. Defendants threaten to continue the unlawful acts, which unlawful acts violate the provisions of the Constitution and the National Labor Relations Act, as well as the Civil Rights Act.

Paragraph twenty-two. The entire object of the bill, as expresed in paragraph 22, alleges plaintiffs have suffered from the threatened acts of the defendants, serious and irreparable injury to their property, personal rights and immunities, and that should defendants be restrained they will be enjoined from the commission of unlawful acts and will be confined to the lawful discharge of their duties as officers of Jersey City and will suffer no damage to their personal or official acts.

Paragraph 23 alleges that to justify the Federal jurisdiction the bill alleges the value of the property rights of each individual plaintiff in his employment, which is being interfered with, exceeds $3000; that the plaintiff, CIO, has property rights exceeding $3000 which are being interfered with, and that the other plaintiffs also are damaged to the sum of $3000.

Paragraph 24 describes the philosophy of the CIO and states that defendants' acts have been a part of the plan to thwart and forestall such organization of workers in Jersey City.

Now, a summary of the charges in the bill deals with the following subject matter:

1. A denial of the right to plaintiff to hold meetings, pursuant to an unlawful plan and conspiracy to forbid all CIO meetings, which conspiracy is being carried out by intimidating owners of halls in order to prevent them from letting the same to plaintiffs.

2. That in furtherance of the unlawful planning and conspiracy, the defendants announced they would not permit picketing in cases of labor disputes except where a bona fide dispute or justifiable strike was involved and would eject persons considered undesirable.

3. That refusal on the part of the defendants to permit the CIO to distribute leaflets and other literature concerning organizational activities and that Mayor Hague publicly issued a false statement that the object of the CIO was to crush by terrorism.

4. The refusal on the part of the defendants to issue permits to plaintiff, Carney, and to plaintiff, American Civil Liberties Union, for outdoor meetings.

5. That the defendants have systematically discriminated against the plaintiffs in the application of city's ordinances and that the activities have been pursuant to an unlawful conspiracy to injure, oppress, threaten and intimidate the citizens of America, including the plaintiffs so as to prevent them exercising the rights and privileges secured by the Constitution.

Now, if your Honor please, it is quite evident that the entire bill of complaint therefore is predicated upon an unlawful plan and conspiracy on the part of the defendants and the bill seeks to enjoin the defendants from the commission of unlawful acts and to compel them to lawfully discharge their duties as officers of Jersey City.

Now, on that proposition it is well settled that a court of equity will not enjoin the commission of a crime. Equity has no power by a mandatory injunction to decree that criminal acts be enjoined—and these are criminal acts. Manifestly if equity had that power, it would not only be assuming jurisdiction where a completely adequate remedy at law is available but would take over criminal jurisdiction and try criminal offenses in proceedings to punish for contempt, should there be a violation of the decree. In other words, the defendant would not in such a case have the right to be

indicted by a grand jury and tried by a jury of his peers but he would be punished by the application of equitable process.

THE COURT: Well, as I understand this bill, Mr. Hamill, it does not intend to charge a crime.

MR. HAMILL: Sir?

THE COURT: It does not intend to charge a crime. "Conspiracy" is used in the sense of the word "plan."

MR. HAMILL: It does, we contend it does charge a crime.

Now, secondly, it has been well settled that an injunction does not lie to compel public officials to perform duties either with respect to the enforcement of ordinances or the criminal law, or to prevent the commission of a crime, nor will they be compelled, by injunction, to exercise the rights and powers vested in them as public officials, except when such failure to act amounts to a breach of trust or a direct invasion of a property right resulting from a breach of trust.

In other words, such property rights must be involved.

This complaint is aimed to prevent the carrying out or the continuance of what plaintiffs claim is an unlawful plan or conspiracy. If this be true, the defendants are subject to indictment for conspiracy, which is a crime, both under the State and Federal law. So, also, the doing of the acts complained of, if true, subject the defendants to indictment for malfeasance in public office. If a crime has been committed, there is an adequate and proper remedy by means of the criminal procedure established both in the State and Federal jurisdictions; the remedy is distinctly not by injunction.

I desire also to call your Honor's attention to the fact that the plaintiffs, unincorporated associations, have no constitutional rights to conduct meetings, or by their agents to speak, and such rights cannot be protected, especially by an injunction in this court. Neither have incorporated bodies,

if your Honor please, the right to free speech. It has never been extended to corporations as such, but corporations will be protected where there occurs an infringement of their property rights.

It is also evident from the bill of complaint that the jurisdiction of this court is sought to be invoked on the ground that there are Federal constitutional questions involved in a controversy where each of the plaintiffs named is damaged to the extent of $3000. We claim that it is apparent from the face of the bill that no such amount can be involved in the present litigation. It deals with no tangible property rights which have a fixed monetary value.

It is also evident in this case——

THE COURT: Well, of course, on that point, Mr. Hamill, I take it the bill invokes the Constitution, which is not limited by——

MR. HAMILL: I don't hear your Honor.

THE COURT: I say I take it that on that point the Constitution of the United States is invoked rather than the jurisdictional amount.

MR. HAMILL: Well, the jurisdiction of this court under the Constitution.

THE COURT: You mean the Bill of Rights?

MR. HAMILL: It is also evidence in this case that any decree based upon the pleadings must be so framed as to compel the defendants to carry out the laws of this State or of the United States. An injunction of that sort cannot be sustained upon any theory. Any order or decree directing defendants, as is prayed for in this bill, to do what the law requires them to do is not feasible because every public official is bound to carry out the law and decrees which are not feasible cannot be made by a Court of Chancery. Take, for example, the allegations concerning the distribution of circulars. There is no allegation that the defendants have

not permitted distribution since the decision of the United States Supreme Court in the Griffin case in Georgia.

THE COURT: Well, if that appeared in the proof,——

MR. HAMILL: There is no allegation.

THE COURT: That is a matter of proof.

MR. HAMILL: —have not permitted distribution since that decision, which held an ordinance preventing the distribution of circulars is constitutional. That is, the distribution on the public streets. A decree against these defendants incorporating the rule laid down by the United States Supreme Court would merely be declaratory of the law as it now is and could serve no purpose.

The bill is also aimed to compel a course of conduct on the part of the officials not in presento but in futuro. Manifestly no decree can compel the future conduct of city officials. Each case must be determined separately and in a direct proceeding and not generally in an injunction proceeding.

In respect to the ordinance requiring permits for open air meetings, the highest court of our State has indicated the constitutionality of such an ordinance. In view of this pronouncement by our courts, each individual case should be determined by the adequate remedy provided in our State courts and not through injunction proceedings in a Federal court. And therefore it is our contention, and we now charge, that the complaint fails to disclose an equitable cause of action, and the court is without jurisdiction to hear and determine the cause, and we now move for all of these reasons which I have set forth to your Honor that the complaint be dismissed and that a decree of dismissal be entered.

THE COURT: Well, Mr. Hamill, as I understand the bill, it does not intend to charge a conspiracy in the sense of the criminal law. That wouldn't be the adequate way of describing it.

MR. HAMILL: We maintain that it does charge a conspiracy, which brings the defendants, according to the allegations, within the scope of the criminal law.

THE COURT: As I understand it, it is a bill to enjoin your preventing the distribution of pamphlets, interfering with the rights of organized labor, and then with respect to the rights of holding public meetings.

MR. HAMILL: But it——

THE COURT: I am in some doubt, myself, as to whether these unincorporated bodies are properly plaintiffs in an equity suit. As you will remember, we omitted them from the decree in the case last spring. You will remember that. However, that would seem to me something that would have to be decided at the time a decree was entered, if there was such a decree.

As far as the other points are concerned it would seem to me that I shall have to rule on them at the time the evidence is offered, if there is objection at that time.

The motion is denied. You may have an exception.

Which exception is hereby allowed and sealed accordingly.

(Sealed)

THE COURT: Proceed.

MR. FRAZER: I am somewhat handicapped in my opening. I had intended to open in a more logical way than I am able to do.

THE COURT: The best opening would be by calling your witnesses, I think.

MR. FRAZER: Very well, sir. Mr. Foley, take the stand.

MR. HAMILL: Now, if your Honor please. I want to bring this to the attention of the Court. There have been subpœnaed on the part of the complainant certain officials of Jersey City, the Mayor of Jersey City, the Director of Public Safety, and the Chief of Police. These are high offices

in the city government with very responsible duties to perform, and I wish to ask the court to inquire of counsel when in all probability he will need these witnesses, and if they are not needed this morning or even until tomorrow, that they be permitted to leave the court to tend to their official duties and return at the call of the Court. I do this for the reason that a statement appeared in one of the local newspapers charging that the mayor of the city was in contempt of court. Counsel on the other side made that statement, and your Honor knows that he was absent to the satisfaction of the Court and was at the call of the court whenever wanted.

THE COURT: Will you name the officials you wish excused, please?

MR. HAMILL: Mayor Hague.

THE COURT: Not by name but by their position. Will you ask, Mr. Frazer, what witnesses you wish excused and I am sure he will be glad to do it.

MR. FRAZER: I was going to say, if I might be permitted to——

MR. HAMILL: I don't want to ask it because I am not asking it as a favor, I am directing my question to the Court as a matter of right.

THE COURT: I will ask it then.

MR. FRAZER: I think there are certain matters which are coming out in court through the testimony of the witnesses and these other witnesses should hear it so as to be able to be interrogated about it directly without having to repeat it. I might say that I do not know in the course of the trial when I would want the officials in question. It depends very much upon the nature of the cross-examination, the length of the examination of the witnesses, and so forth.

It may be that the Court will desire certain witnesses not to be called or not to be further examined, their testi-

mony being merely cumulative on points which the Court feels have been fully proved. They are all matters of that kind. I might say that we have been waiting for this trial for many months.

THE COURT: I know it. I do not know what that has to do with it.

MR. FRAZER: It seems to me, on a plea of great busyness at this time, one of the public officials was out of the state for three months while we were waiting for him. He was recently subpœnaed at a baseball game; and the seriousness of the busyness does not seem to be such as to interfere with his attendance in this court.

THE COURT: Will you state: do you want the witnesses here during every minute of the proceedings?

MR. FRAZER: I would prefer to have them present, but if your Honor feels that that is unreasonable, I will leave the matter in your Honor's hands.

THE COURT: Will you state when you do want them?

MR. FRAZER: I am quite certain we will not call them today.

THE COURT: Not today?

MR. FRAZER: I think not.

THE COURT: Then do I understand that you agree that the officials of Jersey City are excused until tomorrow morning at ten-thirty

MR. FRAZER: I am not excusing them. If your Honor considers it unreasonable to have them in court, under the circumstances your Honor is at liberty to excuse them.

THE COURT: They are excused until tomorrow morning at ten-thirty.

DANIEL J. FOLEY, called and sworn on behalf of the plaintiffs, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Foley, you are one of the plaintiffs in this cause?

A. Yes, sir.

Q. And what were your general relations to the defendant CIO—to the plaintiffs, rather, the CIO on November 29, 1937?

A. I was a field representative of the Committee for Industrial Organization.

Q. And where were your headquarters, if any?

A. Newark, New Jersey.

THE COURT: You do not have to stand, Mr. Frazer, unless you are so inclined.

MR. FRAZER: Some of our Chancellors have gotten us in the habit of standing.

THE COURT: I think it is a very discourteous habit, myself.

Q. Your headquarters were in Newark, New Jersey?

A. Yes, sir.

Q. And on November 29, 1937, what were your activities, can you state them briefly?

A. You mean what occurred on that date?

Q. Yes, what did you do on that day?

THE COURT: I think, Mr. Frazer, we would like to know a little more about this man. Who are you? I mean how did you come to be connected with the CIO and what were your duties a little more in detail?

A. I was given this position as field representative of the Committee for Industrial Organization through the recommendation of the regional director of my home in West Virginia. I worked in West Virginia from July until the 26th day of November when I was transferred to New

Jersey under the jurisdiction of Mr. William Carney, regional director of the Committee for Industrial Organization for the State of New Jersey.

THE COURT: What is your trade?

THE WITNESS: Field representative.

THE COURT: But what do you do, what is your employment, what do you work at?

THE WITNESS: Machinist.

THE COURT: You are a machinist?

THE WITNESS: Yes, sir.

THE COURT: What were you doing in West Virginia, working as a machinist?

THE WITNESS: Up to the time I was given this appointment as field representative for the Committee for Industrial Organization.

THE COURT: Then you came to New Jersey?

THE WITNESS: Yes, sir.

THE COURT: And are you in the office of the CIO in Newark?

THE WITNESS: Yes, sir.

THE COURT: Are you a member of any union?

THE WITNESS: Yes, sir.

Q. What union?

A. United Mine Workers of America.

Q. Now, will you state briefly what you did on the 29th of November, 1937?

A. On the morning of the 29th of November 1937 I left Newark, New Jersey, at about five-thirty that morning in company with Mr. McGinn, Mr. Macri and Mr. Barry.

THE COURT: Now, Mr. Foley, when you use the names of people will you tell us who they are. We

don't know who they are. You do and we don't—when I say "we" I mean I don't know. So give us the history of those three men.

THE WITNESS: Mr. McGinn was a field representative for the Committee for Industrial Organization.

THE COURT: Is he to be a witness? When a man is to be a witness you need not elaborate.

MR. FRAZER: He at the present time is in Europe. I am afraid he will not be back in time, sir.

THE COURT: Who is he, can you tell us?

THE WITNESS: Mr. McGinn?

THE COURT: Yes.

THE WITNESS: He is a field representative for the Committee for Industrial Organization, the same as I was.

THE COURT: Is he from West Virginia, too?

THE WITNESS: No, he was working in the Newark office, Newark, New Jersey.

THE COURT: What is his trade, do you know?

THE WITNESS: I believe he is a seafaring man.

THE COURT: A sailor?

THE WITNESS: Yes, sir.

THE COURT: Is he a member of some maritime union?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, the next one.

Q. That is Mr. Macri.
A. Mr. Macri.
Q. Who is he?
A. That was Mr. Macri I was just referring to.

Q. Who is Mr. Macri?

A. Mr. Macri is a field representative of the Committee for Industrial Organization. I am not certain, but I believe he is a member of the United Mine Workers of America.

THE COURT: Is he to be a witness?

MR. FRAZER: He is in the hospital at the present time, sir. Whether he will recover in time to come I don't know.

THE COURT: Then there was one other man.

THE WITNESS: Mr. Barry. I understand Mr. Barry was a volunteer organizer for the Committee for Industrial Organization.

MR. HAMILL: You say you understand. Do you know?

THE COURT: Is he a witness?

MR. FRAZER: Mr. Barry is at present out of the jurisdiction. We have hopes of having him here.

THE COURT: What is his first name?

THE WITNESS: I don't know what his first name is.

MR. FRAZER: Walter Barry.

THE COURT: All right, now, we know who they are, as far as you know.

Q. Now, how did you come to go over there at five-thirty on the morning of November 19th?

A. We had instructions that there would be a meeting at 76 Montgomery Street in Jersey City.

Q. And what was the purpose of that meeting?

A. The purpose of that meeting was to distribute handbills announcing a meeting for the following Friday of that week.

Q. I show you a copy of a handbill and ask you if that is the handbill which you were distributing that day?

A. That is correct.

MR. FRAZER: I would like to offer it in evidence.

MR. HAMILL: May I inquire before it goes into evidence: Did you get up this handbill?

THE WITNESS: Did I get it up?

MR. FRAZER: Just a moment, sir; I think that is not proper examination on the exhibit. If he wishes to cross-examine, that is another matter.

MR. HAMILL: I am asking the question in order to find out if this the handbill and my first question is: "Did you get it up"?

MR. FRAZER: It is immaterial whether he got it up.

THE COURT: May I see it?

MR. HAMILL: I have a right to test his credibility as to whether he distributed that particular handbill.

THE COURT: Well, I suppose if he knows he might as well answer because we will want to know anyway. Do you know who got this up?

THE WITNESS: No, I could not say for sure. It was gotten up by the sanction of the Committee for Industrial Organization, that is all I know.

MR. HAMILL: How do you know that was the handbill you distributed?

THE WITNESS: Because I had them in my hand on that particular morning.

MR. HAMILL: Where did you get this particular copy that counsel has shown you?

THE WITNESS: His Honor just handed it to me.

MR. HAMILL: No, but before his Honor handed it to you, if your memory is good, it was handed to you by your counsel, wasn't it?

MR. FRAZER: Yes.

THE COURT: What we want to know, Mr. Foley, is: Is that the same handbill you were distributing that morning? By looking at it can you recollect that it was the same one?

THE WITNESS: That is correct, yes, sir.

MR. FRAZER: I might say that a copy of it has been attached to the bill of complaint and it has not been denied. I will offer it in evidence.

(Handbill marked in evidence Exhibit P-1.)

Q. I understand about five-thirty A. M. you went to Jersey City in company with these three gentlemen?

A. Yes, sir.

Q. Where did you go to?

A. 76 Montgomery Street.

Q. By what means did you come from Newark?

A. We left Newark in Mr. Macri's car.

Q. And did you notice anything on the streets of Jersey City as you were driving up to 76 Montgomery, in that vicinity?

A. I had never been in Jersey City before. As we passed the City Hall I inquired of the men in the car what was going on, all those cars parked around the City Hall with plain clothes men, apparently, in them. I would say there were approximately twenty cars lined up. I was informed we were getting the stage set for us.

MR. HAMILL: I ask that that be stricken out, what he was informed. We want to know what he knows, not what he was told.

THE COURT: Yes.

MR. FRAZER: It is just part of the general picture. I have no objection to its being stricken out.

Q. Now you then came to 76 Montgomery Street?

A. That is right.

Q. And what did you do then, Mr. Foley?

A. After we arrived at 76 Montgomery Street, Mr. Barry and I got out of the car and took a package of these bills up and entered 76 Montgomery Street. We went through the revolving doors and up to this meeting hall. We were to be followed by the other two men who accompanied us there, Mr. Macri and Mr. McGinn.

We were probably in the hall five minutes and a newspaper man came in and asked me, or told me, rather, that my two friends had been picked up as they were coming from the car with these packages.

MR. HAMILL: I wish Mr. Frazer could keep his witness from relating what someone else told him. All that is evidential is that a newspaper man talked to him.

THE COURT: That is all.

MR. FRAZER: I think it is more than that, sir. I think we are entitled to more or less of a verbal picture here.

THE COURT: But you cannot do it by hearsay. I am not much of an advocate of the rule in its strict application, still there is the hearsay rule.

MR. FRAZER: I think it is not strictly applicable to a court of equity where a jury is not present.

THE COURT: I am afraid the decisions are otherwise. I have often thought it would be better if they were not, but I am afraid we will have to observe the hearsay rule.

MR. FRAZER: It seems to me that this is part of the res gestae. We are picturing here the whole situ-

ation as it comes in, which will afterward be confirmed by actual testimony.

THE COURT: I think perhaps you had better confine it to actual testimony.

MR. FRAZER: Very well, sir.

Q. So that a newspaper man came in and made a report——

MR. HAMILL: A newspaper man told him something. He did not make a report.

THE COURT: May I ask you, Mr. Foley, what sort of a hall this was? Was it upstairs, downstairs or what?

THE WITNESS: It was upstairs from the street level.

THE COURT: Was it a large room?

THE WITNESS: A fairly large one, yes, sir.

THE COURT: As large as this court room?

THE WITNESS: Oh no, probably one-quarter as large.

THE COURT: Was there anyone in the room when you entered it?

THE WITNESS: Yes, sir.

THE COURT: Who were there

THE WITNESS: Representatives of the different international organizations were assembling there that morning.

Q. How many were there as long as you remained there?

A. Well, they kept coming. When I left the hall there were probably fifteen people in there.

Q. Now how long did you remain in the hall before you left?

A. I would say twenty minutes. As I entered the hall there was a phone call came to the hall and Mr. Barry answered the phone. The phone call was for Mr. Macri.

MR. HAMILL: I object. I object. There was a 'phone call. That is, the telephone rang and somebody went to it?

By MR. FRAZER:

Q. Did you hear the 'phone call yourself?

A. Yes, I heard the conversation.

Q. You heard the conversation?

A. Yes.

Q. And did you recognize the speaker?

A. Yes, sir.

Q. And who was the speaker?

A. Mr. Macri?

By MR. HAMILL:

Q. You mean the speaker on your side of the 'phone?

A. No.

Q. The speaker in the meeting room was Mr. Macri?

A. No.

THE COURT: No, he means on the other end.

A. (Continuing.) The man making the call.

THE COURT: Mr. Barry was on this end.

A. (Continuing.) The man who called to the hall was Mr. Macri.

Q. Where were you standing when the person——

MR. FRAZER: Now, it seems to me this is cross-examination.

MR. HAMILL: Well, it seems evidently a device by means of leading questions to bring it within some legal rule, that we ought to have some liberty to find out just what happened there.

MR. FRAZER: I think it is going to take us a long time, sir, if every question I ask is to be stricken.

MR. HAMILL: Not if they are within the rules of evidence; we will get along very rapidly.

THE COURT: If you question the accuracy of this witness' recollection, why then, I think——

MR. HAMILL: It is very evident that this 'phone call was related to this man by the person who answered the 'phone.

THE COURT: Did you answer it yourself?

THE WITNESS: No, I was sitting beside Mr. Barry at the desk when the 'phone rang.

THE COURT: Did you hear the voice on the other end?

THE WITNESS: Yes.

THE COURT: Did you recognize that voice?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

MR. HAMILL: Your Honor will grant me an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

By MR. FRAZER:

Q. Now, after that did you remain in the hall some time? The man was Macri, I think, that was telephoning?

A. That's right.

Q. And did he come back to the hall?

MR. HAMILL: Oh, please don't lead him. Just ask him when did he come back, or did he.

A. Do you want me to relate the conversation over the 'phone?

Q. Yes, you relate—not the conversation; you heard Mr. Macri over the telephone. Now, you did certain things. Did you go out or did you stay there or what did you do?

A. We stayed in the hall until Mr. Macri returned to the hall.

Q. And how much longer was that, Mr. Foley?

A. Probably a half hour.

Q. He got there about what time, would you say?

A. About fifteen minutes till seven.

Q. Now, after his return what did you do, and your associates?

A. You want me to relate Mr. Macri's conversation in the hall or his——

Q. No.

THE COURT: Tell us what you did.

Q. Did he give you any instructions?

A. Yes, sir.

Q. And did you carry those instructions out?

A. Yes, sir.

Q. And what did you do, as a result of those instructions?

A. We left the hall.

Q. At what time?

A. I would say it was ten minutes of seven.

Q. And were you provided with any pamphlets or anything of that sort?

A. Yes.

Q. Now, tell just what happened from the time that you left the hall, who you left with, and what happened.

A. I left the hall in company with Mr. McGinn. We walked up the street, the fifty of us, I will say there was approximately fifty, two by two, to a place they called Harbor Side, where we were to meet these workers coming in to give them these handbills. As we arrived through the door going out onto the street there was quite a few police

and plain clothes men, who followed us down the street. I think we went about a block and a half, probably two blocks. When we got to this Harbor Side building we were surrounded by these officers. We were told to get going. It was impossible to get going because we were entirely surrounded. There was quite a bit of pushing and shoving, and then everybody was herded toward the ferry with instructions to get out. I didn't feel that I had any business in New York——

MR. HAMILL: Never mind your comments. Just let us have your testimony.

MR. FRAZER: Now, if it please the Court, I think that there should be objections made not instructions given to my witness.

THE COURT: All right.

MR. HAMILL: All right, I make it in the form of an objection.

THE COURT: Just tell us what happened.

A. When we got to this ferry the majority of the people protested that they didn't have any business on the ferry——

MR. HAMILL: I object to that.

MR. FRAZER: Well, that is part of the res gestae.

THE COURT: Yes, that certainly is. Go on, Mr. Foley. Go ahead.

A. Some of them protested on the grounds that they were residents of Jersey City, others protested on the grounds that they were residents of Newark.

MR. HAMILL: I object to that. That is a conclusion, that they objected on the grounds. If your Honor holds that it is part of the res gestae, then he should relate what they said, and your Honor will determine what the grounds were.

THE COURT: I don't suppose he remembers their exact words.

Just give the general tenor——

A: I couldn't give the exact words because there was too much confusion.

MR. HAMILL: Well, then, he is evidently drawing a conclusion.

THE COURT: Go ahead, Mr. Foley.

Q. All right. Some of them were protesting about going to New York because they didn't live there and others didn't want to go there, is that right?

A. Yes. I protested because I had no business in New York.

Q. Now, tell us what happened from there, Mr. Foley.

A. During this confusion there were several arrests made. Cars were pulling up, the people were being put into the cars, and the majority that was left turned around and went back to 76 Montgomery Street to this meeting hall.

Q. What did the police do as you were doing that?

A. When we were going back?

Q. Yes.

A. Well, during this confusion and pushing, these handbills were confiscated. I probably had thirty or forty in my hand, and they were jerked from my hand and torn in two. I was shoved against the wall——

Q. Who tore them from your hands?

A. An officer.

Q. You say you were shoved against the wall?

A. Yes, sir.

Q. Had you actually distributed any bills?

A. I had handed out two or three.

Q. All right.

A. We went back to 76 Montgomery Street. All these bills had been confiscated that was in our possession up till that time, and we got more of these bills from the hall,

started down and found the revolving doors of the building blocked by the officers. Two plain clothes men came through the door and searched us one by one; confiscated the bills again, left us out on the street. We were placed in cars.

Q. How many came out at a time onto the street?

A. They were let out two by two, one at a time. Of course, through the segments of the door.

Q. All right. Go on from there.

A. These cars pulled up on the sidewalk, these men were placed in the cars, taken away; we didn't know where; we couldn't get any information as to where they were being taken, what they were charged with. I asked several of the officers and received no reply. I was placed in a car with three other men and for some unknown reason, after I was in the car I was taken out of the car again.

Q. Who were the three men that were in with you, do you remember?

A. They were strangers to me. From there I went——

THE COURT: Do you know whose car it was, Mr. Foley?

THE WITNESS: No. I don't know exactly whose car it was.

THE COURT: I mean was it a police car or what?

THE WITNESS: I suppose it was a police car.

THE COURT: When you say you were placed in it, what do you mean by that?

THE WITNESS: I was placed in this car by two plain clothes men, and just as they were about to shut the door there was a conversation about Federal observers in the crowd, and I was—I don't know why—taken out of the car. Anyhow, I wasn't taken with the rest of them.

THE COURT: Go ahead.

A. (Continuing.) There were two or three of us went to the closest precinct. I believe the lady, in fact I know the

lady that was with us was a Miss Cox, Miss Nancy Cox. We walked out the street to this precinct, I not being familiar with it, never having been in the city before; and there was probably ten or twelve men, union men, in front of the door of this precinct, and I started up to the door—I was looking for Mr. McGinn. Mr. Barry and Mr. Macri, the men from the Newark office. As I went up to the precinct door the boys told me I couldn't get in, they wasn't admitting anybody.

MR. HAMILL: I object. I object to what the boys told him. That doesn't mean anything.

A. (Continuing.) The men that were in the hall, that had not been placed in the cars——

THE COURT: Go ahead.

Q. All right. Go ahead, Mr. Foley.

A. (Continuing.) I was very much interested in these three men in particular because they were from the Newark office, and when I walked up to the door they said, "There is no use trying to get in. They won't let you in."

So I had a sheriff's courtesy card with me and I presented that card at the door, and I was admitted. The man at the door directed me to a lieutenant's desk, I believe. I inquired for these three men and he sent me from there to the captain of the precinct on the second floor, where I inquired of the captain——

THE COURT: Do you remember his name, Mr. Foley? Give us names wherever you can.

THE WITNESS: No, I don't know the captain's name. They told me simply he was the captain.

A. (Continuing.) I inquired for these three men. He said that several of the men had been brought there but——

MR. HAMILL: I object to what he said.

MR. FRAZER: This is part of the——

THE COURT: Oh, yes, go ahead.

MR. HAMILL: What he said?

THE COURT: Go ahead. Go ahead, Mr. Foley.

Q. What did he say?

A. I told the captain that we were under the impression that these men were being distributed all over the city to different precincts and I would like to know where these three particular men were. He said he didn't have a list of the men brought in but he thought that I wouldn't have to look any farther, that the activities were to be centered there at that precinct. He asked me what particular interest I had in these three men. Then I told him that two of them were field representatives of the Committee of Industrial Organization. So he told me the court was open at nine o'clock, and to go down to the courtroom and get a seat, and I would see the proceedings myself. So I did. I stayed in the courtroom from the time court opened until it closed, about four o'clock that afternoon.

THE COURT: What was this court? Do you remember that?

THE WITNESS: It was the court in which Judge Botti presided.

THE COURT: That identifies it.

Q. What happened in the courtroom?

A. About 9:30 I saw these men brought in. Among them was Mr. Barry, Mr. McGinn and Mr. Macri, with eleven other men. Our attorneys asked the Judge to set the proceedings over for another day in order to give the counsel an opportunity to prepare the case. The motion was denied. Then they asked for a trial by jury. The motion was denied. Seven of the men were charged with distributing leaflets in violation of the city ordinance and sentenced to five days. The other six, including Macri, McGinn and Barry, were held for unlawful assembly and held under $1000 bail for action of the Grand Jury.

MR. HAMILL: Now, at this point, I presume that counsel is going to offer the records of the Court as to these proceedings to which this lay witness is now testifying. If he isn't, then I object on the ground that the best evidence——

THE COURT: Are there any records?

MR. HAMILL: —of these facts are the records of the Court.

THE COURT: Maybe there weren't any records. Were there?

MR. FRAZER: We would be very happy—we have a stenographic record, sir—we would be very happy to offer it.

MR. HAMILL: All right.

THE COURT: Then they should be offered.

MR. HAMILL: That is, a stenographic record, duly verified by whoever took the record.

Q. Did you have anything to do with the getting of the bail for these men?

A. No, sir.

Q. Now, you say these proceedings lasted until about four o'clock in the afternoon?

A. That's right.

Q. When did the judicial proceedings first start?

A. I would say it was probably nine-thirty; about two o'clock that afternoon our counsel asked for a thirty minutes recess for lunch. Even that was denied.

MR. HAMILL: I object to this. What is the relevancy? Is it the idea to show that the Court was unjust? Can you come into another courtroom and attempt to give your opinions on what the judge did?

THE COURT: Don't characterize it by saying "even." Just tell us what happened, do you see?

MR. FRAZER: I thought the witness had made no characterization.

THE COURT: He put in the word "even."

MR. FRAZER: Oh, "even."

MR. HAMILL: Well, evidently you were leading him into——

THE WITNESS: I didn't intend to do so.

MR. HAMILL: —facts which would mean a characterization. At any rate, may I inquire of the Court what is the purpose of this examination, that part of it which refers to the proceedings in the Court?

THE COURT: Well, we are going to have the proceedings, I take it.

MR. FRAZER: Yes, the proceedings will be brought.

Q. Was anything said about Mr. William J. Carney during the course of the court proceedings?

A. Yes, sir.

Q. By the Judge?

A. Yes, sir.

Q. Will you state what that was.

THE COURT: Well, isn't that in the record?

MR. FRAZER: I don't think it was on the record, sir.

MR. HAMILL: I object on the ground of immateriality.

MR. FRAZER: I think it is——

MR. HAMILL: The pleadings do not state any such facts.

MR. FRAZER: Well, we don't have to plead our evidence, as I understand it.

THE COURT: I will allow the question. Go ahead.

A. You want me to repeat that——

Q. Yes, please.

A. He said, "If William J. Carney is in this courtroom; and if he is, he has no business to be here, but in case he isn't, let the information be conveyed back to him that Jersey City wants none of Bill Carney nor none of his CIO hoodlums."

MR. HAMI : Now, I ask that that be stricken out. That is a reflection upon the Court. Are they going to offer proof that the Judge had no right to say that? Are they going to take the seat of justice and overrule Judge Botti——

MR. FRAZER: Certainly, the Judge had no right to say that. I think it is part of the whole picture.

MR. HAMILL: It is irrelevant and immaterial, and it is hearsay.

MR. FRAZER: It can be technically rebutted if it isn't true. Judge Botti can take the stand and say it isn't true.

MR. HAMILL: The point is that it is utterly irrelevant——

THE COURT: Well, I will first examine the record and see if it is there. I haven't got the record yet.

Q. What happened after that, Mr. Foley, as far as you had to do with it?

A. Well, I stayed there until Court adjourned, which was about probably four o'clock, four-thirty; then I returned to Newark.

Q. Now, you stated that you saw certain persons taken into cars down at the ferry and also in front of 76 Montgomery, if I understand correctly.

A. That's right.

Q. You don't know what happened to those persons except as you saw them in the police court?

A. The only persons that I knew or saw afterwards were the thirteen men who were brought into the courtroom.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mr. Foley, you were the field representative in Virginia, were you, did you tell us?

A. West Virginia.

Q. In West Virginia. You were connected with what organization?

A. My last affiliation was the United Mine Workers of America, which I still retain.

Q. And before you joined the United Mine Workers of America, with whom were you affiliated?

A. I don't understand your question.

Q. Well, were you a member of any other organization?

A. Yes, sir.

Q. What is the name or what was the name of that organization?

A. Flint Glass Workers of America.

Q. Where have they their headquarters?

A. You mean the national headquarters of that organization?

Q. Yes.

A. Toledo, Ohio.

THE COURT: What are they? What sort of——

THE WITNESS: That is an A. F. of L. organization.

Q. And what was your office or position with that organization, the Glass Workers?

A. I was shop committeeman.

Q. You were what?

A. Shop committeeman.

Q. What are the duties of shop committeeman?

A. Well, the duties of the shop committeeman is to take up the grievances that arise among the workers and present them to the management for a hearing.

Q. And did you take up any grievances——.

THE COURT: Just a minute. What shop were you in?

THE WITNESS: That with the Owens Illinois Glass Company.

THE COURT: You didn't say that. The Owens Illinois——

THE WITNESS: The Owens Illinois Glass Company.

THE COURT: ——Glass Company.

Q. Were there any grievances while you were shop committeeman?

A. Yes.

Q. How many?

A. I couldn't say.

Q. Quite a number of them?

A. No.

Q. What were the grievances about?

A Well, grievances in connection with, oh, probably equal division of time among the workers on various things that pertain——

Q. Any strikes?

A. No, sir.

Q. Now, when did you first come to New Jersey?

A. I believe it was—it was the Monday, Monday before the 19th of November, whatever date that was.

Q. 1937?

A. That's right.

Q. And who sent you to New Jersey?

A. The Committee of Industrial Organization.

Q. Any particular officer?

A. Yes, I received instructions from Washington.

Q. Any particular officer in Washington?

A. From the office of John Brophy.

Q. Any particular officer in the office of John Brophy?

THE COURT: We don't know who John Brophy is, you see; we don't know officially. So will you state who he is?

THE WITNESS: John Brophy is the chairman for the Committee of Industrial Organization; chairman of the committee.

Q. What were the instructions you received?

A. To report to Newark, New Jersey, to Mr. William Carney, Regional Director for the State of New Jersey.

Q. How long has Mr. Carney, to your knowledge, been Regional Director in New Jersey?

A. I don't know.

Q. So that you were there from October the 11th or October 19th, was it, or rather November 19th, you first came to Jersey City?

A. It was the Monday previous to November the 19th, whatever date that was.

Q. And then on November——

A. Or the 29th.

Q. The 29th——

A. It would be the 22d, the 22d of November, I believe.

Q. You were sent for the purpose of testing the ordinance of Jersey City?

A. No, sir.

Q. Did you know there was an ordinance?

A. I didn't get your quetsion before that. Will you repeat it?

Q. Were you sent here to New Jersey to take part in movements to test the ordinance of Jersey City?

A. There was no mention made of testing the ordinance when I was sent here.

Q. You were told to put yourself under the direction of Mr. Carney?

A. That's right.

Q. How did you happen to come to Jersey City?

A. On that particular date, the 29th?

Q. On November 29th, when you did come.

A. It was understood and instructed that there would be a meeting at 76 Montgomery Street that morning.

Q. Who instructed you?

A. We were all instructed, at the regional director's office.

Q. When you say "all" whom do you mean?

A. The representatives of the various international organizations.

Q. Let us have their names.

THE COURT: He gave you three names, I think, Mr. Hamill.

You gave the three names already, didn't you?

Q. You mean McGinn, Macri, Barry—and who else?

A. No, those were three of the field representatives.

Q. Well, what other representatives were instructed? Give us their names.

A. I couldn't give you their names because I don't know them. I thought you asked what organizations were present at that meeting.

Q. Well, I ask you now who were the men who were instructed, You said "All of us got instructions," didn't you?

A. That's right.

Q. All right. Who were the "all"?

A. The only men that I was acquainted with was Macri, McGinn and Barry.

Q. And how many were there in number, who received instructions?

A. I couldn't begin to answer that question. There was——

Q. Where did you receive the instructions?

A. Newark, New Jersey.

Q. Where.

A. At the regional office of the Committee of Industrial Organization.

Q. Where is that?

A. Newark, New Jersey.

Q. Yes, but where?

THE COURT: He means what address.

Q. What street in Newark?

THE COURT: The address.

A. That would be at 15 William Street.

Q. That's at 17 William Street. That was where Mr. Carney had his headquarters, was it?

A. This meeting didn't take place in the headquarters of the CIO, understand.

Q. Yes.

A. This was a hall upstairs, reserved for this——

Q. But it was in the same building?

A. Yes, sir.

Q. That is, Mr. Carney's offices are downstairs and then there is a meeting hall upstairs?

A. That's right.

Q. And who called you together?

A. Well, it was generally understood that there would be a meeting that afternoon. I don't know who called the meeting.

Q. And when you got to the meeting who addressed the meeting?

A. Well, I couldn't just say. I had——

Q. Well, you got your instructions at that meeting, didn't you?

A. It was understood—the bills were there, printed, calling for this meeting.

Q. Yes. Well, then, when you got there, now you are in the hall and you are seated, who talked to you?

A. Why, Mr. Barry spoke, Mr. Carney——

Q. Yes.

A. —two or three other men, whose names I am not familiar with.

Q. How many in all? What was the number of speakers in all?

A. Oh, probably two or three.

Q. Well, now, you have mentioned—you said Mr. Carney, Mr. Barry and three or four more. Now, there must have been more than two or three.

A. Those were the principal speakers.

Q. How many in all spoke? Can you remember the number, ten or twelve?

A. Oh, no; about three.

Q. Who were they?

A. Mr. Barry and Mr. Carney.

Q. And who is the other one?

A. I couldn't recall his name. I didn't know him.

Q. Mr. McGinn didn't speak?

A. No, sir.

Q. And you didn't speak?

A. No, sir.

Q. How many were present at the meeting?

A. Oh, probably seventy-five or eighty.

Q. And what were the instructions given to you?

A. That we would assemble at this particular hall in Jersey City on Monday, the 29th, for the purpose of attending this meeting to pass out these bills.

Q. And you were to assemble at 76 Montgomery Street on November 29th, you were to leave Newark at 5:30 in the morning?

A. There was no particular time designated to leave Newark.

Q. But you were to go to Jersey City on November 29th, 1937, and go to 76 Montgomery Street?

A. That's right.

Q. For the purpose of distributing circulars?

A. That is right.

Q. Did anybody say anything about an ordinance of Jersey City?

A. Did anybody say anything about an ordinance?

Q. Yes.

A. I was informed, or rather the meeting was informed——

Q. By whom, by whom?

A. I believe——

Q. By Mr. Carney?

A. I think it was Mr. Barry brought it up.

Q. By Mr. Barry?

A. Yes.

Q. What did he inform the meeting?

A. That an application had been made for a permit on several occasions and had been denied.

Q. Yes, and that there was an ordinance in force in Jersey City against the distribution of circulars? Didn't he tell you that?

A. Yes.

Q. And that you were to go over there and distribute them anyhow?

A. That they felt—there was legal advice that the ordinace was unconstitutional.

Q. And he told you that in his judgment the ordinance was unconstitutional and that ordinance or no ordinance you were to distribute the literature, is that right?

A. That is right.

Q. In other words you came over to make a test of this ordinance, didn't you?

A. I suppose it resulted in that.

Q. Well, didn't you?

A. I didn't give it any particular thought.

Q. Well you are a very intelligent man, Mr. Foley, and you knew there was an ordinance, didn't you?

A. I knew there was no such stuff as that in my native state.

Q. I know. But you knew that there was in the state to which you had been transferred, to wit, New Jersey?

A. Well, I thought since I was still within the United States, that I would have the same constitutional rights in the State of New Jersey that I had in West Virginia.

Q. But you didn't—and on account of holding that belief you didn't think that you had to obey the Jersey City ordinance because they didn't have in West Virginia, is that right? Was that your reasoning?

A. Not as long as it was unconstitutional I didn't think so.

Q. And that was the reason why you came over to distribute those pamphlets, because you knew there was an ordinance, that a permit had been denied, but because you thought it was unconstitutional you would distribute them anyhow, is that right?

A. That is right.

Q. And all of them had the same opinion as you had?

A. I don't know, I can only answer for myself.

Q. You don't know what they came for, do you?

A. They came to distribute those handbills.

Q. And then they had the same opinion as you had?

A. They may not have had.

Q. All right. They had the same purpose as you had?

A. Yes, sir.

Q. And when you saw the police as you passed the City Hall—you told us as you passed the City Hall twenty cars were lined up with plain clothes men. Now you saw them there?

A. Yes.

Q. How did you know they were plain clothes men?

A. Because they didn't have uniforms on.

Q. Well, how did you know they were members of the police force?

A. Mr. McGinn told me they were.

Q. And that is the only reason you knew?

A. That is right.

Q. But you did not know yourself whether they were plain clothes men belonging to the police force or not?

A. Well, I could see them coming out of the City Hall and getting in the cars.

Q. Yes, City Hall is a public place, isn't it?

A. Yes, but that was probably ten minutes to six in the morning.

Q. All right. The City Hall is open all night, isn't it?

A. I don't know.

Q. Then all you knew was that they were plain clothes men because Mr. Carney told you so?

A. Mr. McGinn.

Q. Mr. McGinn told you so and that is the only way you know?

A. That is correct.

Q. Now then, you and Mr. Barry got your handbills in the meeting room, didn't you?

A. Yes, sir.

Q. And that is 76 Montgomery Street?

A. Yes, sir.

Q. And then there was this telephone call while you were in the place?

A. Yes, sir.

Q. And a few minutes after that Mr. Macri came in?

A. Probably twenty minutes after that call, fifteen minutes.

Q. So that what you intended to do was to defy the police and distribute those circulars, ordinance or no ordinance?

MR. FRAZER: I object.

MR. HAMILL: This is cross-examination.

THE COURT: I didn't understand that you had asked for a permit to distribute the circulars. Do you know that of your own knowledge?

THE WITNESS: Why only that I was told that several requests had been made for a permit that were denied, to pass these bills.

THE COURT: He does not know that of his own knowledge.

THE WITNESS: No, sir.

Q. And you knew that the permits had been denied? You had been told that, hadn't you?

A. Yes.

Q. And you knew that you had no permit to distribute that literature?

A. Personally?

Q. Oh, personally, yes.

A. No.

Q. Personally, officially or any other way. And you knew you might be arrested for distributing this literature without a permit, didn't you?

A. Yes, sir.

Q. And you came over to dare the police to arrest you?

MR. FRAZER: I object to that.

A. No, I would not say that.

Q. Well then what—you saw the police as you were passing the City Hall?

A. That is right.

Q. You saw the police when you were at 76 Montgomery Street?

A. Yes, sir.

Q. You knew that the police were there to prevent you from distributing the literature, didn't you?

A. Yes, I suppose that is what they were there for.

Q. Well, wasn't it? Weren't you there for that purpose?

A. They stopped the distribution of the handbills, if that is what you mean.

Q. So you were there to distribute the literature, whether the police wanted you or not, weren't you? Why do you hesitate?

A. I don't understand the question.

THE COURT: May I inquire——

Q. You mean dangerous in what way? In what way dangerous?

A. I didn't say dangerous.

THE COURT: He said he didn't understand the question. May I inquire whether there was a test—weren't these other persons convicted in the Recorder's Court? Is that correct?

MR. FRAZER: Yes, sir.

THE COURT: In Judge Botti's court?

MR. FRAZER: Yes, sir, they were convicted and there was a writ of certiorari allowed by the United States Supreme Court to review the conviction.

THE COURT: What is the status of that?

MR. FRAZER: The writ has been allowed, sir, but it has not been argued yet.

MR. HAMILL: As a matter of fact you will find out by consulting Mr. Kopelsohn that the writ has been withdrawn, the men served their sentence and the matter has been closed up.

THE COURT: The only reason I ask that, Mr. Hamill,——

MR. HAMILL: The writ is not awaiting argument at all. The writ has been withdrawn and the proceedings closed.

THE COURT: In the Lovell case, she was convicted in the Recorder's court——

MR. HAMILL: If I am not mistaken—and I want to be corrected if I am——

MR. FRAZER: That is the first I heard of it.

MR. HAMILL: Somebody on your side might inquire by telephone and I will take your statement.

THE COURT: In the Lovell case, as you know, Mr. Hamill, she was convicted in the Recorder's court also for distributing circulars, and she appealed her conviction finally to the Supreme Court. It does not appear whether she was out on bail or not.

MR. HAMILL: What case are you reading from?

THE COURT: Lovell v. The City of Griffin in Georgia.

MR. HAMILL: Yes, sir. She was distributing pamphlets on the public streets.

THE COURT: And she was convicted of it. That is the only reason I mention it and it does not appear though whether she was out on bail or not.

Q. So that you were there to distribute the literature whether the police wanted you to or not?

A. I was there to distribute the literature.

Q. With full knowledge that a permit had been refused and the police were there to prevent the distribution, is that right?

A. Do you want me to say that I would continue to distribute this literature even when the police prevented me from doing it? Is that what you want?

Q. Yes.

A. No, sir.

Q. Then you did not distribute any—well then do I understand you came over to comply with the law?

A. No.

Q. Well then what did—when you passed the police station and saw these twenty cars and saw the plain clothes men and got the information, you knew that the police were there to prevent you from distributing the literature, didn't you?

A. I didn't have a chance to distribute it when it was taken from me.

Q. No. You knew before you got to 76 Montgomery Street that it was not permitted and would not be permitted by the police for you to distribute the literature?

A. I only knew it from hearsay. I didn't have anything official on it.

Q. All right. But you knew it?

A. From hearsay, yes.

Q. You want to say now that you didn't know it?

A. I didn't know it officially.

Q. No. Didn't you know it as a matter of fact? Didn't you know it actually?

THE COURT: You do not even know, Mr. Foley, do you that a permit was asked for? I would like the record, Mr. Frazer, of all the legal proceedings. I would like the records of the request for a permit to distribute this literature if there was such request.

MR. FRAZER: I think there is no such thing.

THE COURT: And the proceedings undertaken by counsel in their review of the conviction.

MR. FRAZER: I would be very glad to get it, your Honor. My understanding is that the applications for permits are verbal applications made to the captain of the precinct. There is no requirement for a permit in the ordinance, no provision for it at all.

THE COURT: May I have the ordinance, Mr. Hamill?

MR. HAMILL: I think I have a copy of it here.

Q. You made no application for a permit?

A. No, sir.

Q. Macri made no application——

THE COURT: I think it is a little unfair to this witness to assume that he was consciously violating the ordinance unless he knew.

MR. HAMILL: He is presumed to know the law under the general proposition that we all have to labor under, which is not always actually so.

THE COURT: Practically never so.

MR. FRAZER: The law in the Englewood case is similar—not Englewood, Edgewater.

THE COURT: You have the ordinance?

(Papers handed to the court.)

THE COURT: I do not see anything about the permit in it at all.

MR. HAMILL: No, it simply says: "no person shall distribute or cause to be distributed or strewn about any street or public place, any newspaper, paper, periodical, book, magazine, circular or pamphlet."

THE COURT: Then how would you go about getting a permit, Mr. Hamill?

MR. HAMILL: Why you would not go about getting a permit. The act is prohibited by the ordinance.

THE COURT: Then the witness can scarcely be criticized for not having a permit, can he?

MR. HAMILL: If your Honor please, may I ask the witness a question?

THE COURT: Yes.

Q. You told us that permits were refused. Who made applications for permits?

A. I don't know.

Q. Well, how do you know then that permits were refused?

A. I heard Mr. Barry say at the meeting that they had been refused.

Q. And that is the only reason you know?

A. That is right.

MR. HAMILL: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. On the question of those plain clothes men, did you see them afterwards in the company of uniformed officers?

A. Yes. They both acted in conjunction with each other.

Q. And was it a plain clothes man or uniform man that took the things from you, the pamphlets?

A. The plain clothes man.

Q. On both occasions?

A. Yes.

Q. There were two occasions, weren't there?

A. Yes.

Q. Two different occasions?

A. Yes, at the Harborside Building and the other at 76 Montgomery Street.

Q. What did he do with the pamphlets when he took them away?

A. The first time?

Q. The first time.

A. They were torn in two.

Q. What did he do the second time?

A. I think they were just crumpled up.

MR. FRAZER: That is all.

RE-CROSS-EXAMINATION.

By MR. HAMILL:

Q. Are you still with the CIO?

A. Yes, sir.

Q. In the same capacity?

A. I am called here as a witness.

Q. No. Your official capacity with the CIO. Are you in the same capacity or position in which you were when you first came to New Jersey on November 19, 1937?

A. No, sir.

Q. What are you now?

A. My services as field representative were terminated on the 10th of last December.

Q. Well, what position do you hold now?

A. Now?

Q. Yes.

A. Unemployed.

Q. So that you have not been employed by the CIO since December 10, 1937?

A. That is right.

Q. Is that right?

A. That is right.

Q. And you are not connected with them now, is that so?

A. I am furloughed, subject to recall at any time.

Q. Under salary?

A. No, sir.

Q. Who furloughed you?

A. Instructions from Washington.

Q. Were they written instructions?

A. Yes, sir.

Q. To whom were the instructions addressed?

A. To me.

Q. To you?

A. Yes.

Q. By mail?

A. Yes, sir.

Q. By letter?

A. Yes, sir.

Q. And have you that letter with you?

A. Not on my person, no.

Q. I mean you will have it by tomorrow?

A. It is at my home in West Virginia, Fairmont.

Q. These instructions were sent to you in December 1937, and where were you?

A. Fairmont, West Virginia.

Q. But how long then were you employed in New Jersey?

A. I came here the 22d of November and left here the 8th of December.

Q. Were you sent up here for the purpose of leading this movement——

A. No, sir.

Q. —to distribute circulars, police or no police?

A. No, sir. That was never mentioned.

Q. You came up on November 22d and you left on December 8th?

A. December 8th, yes, sir.

Q. And it was on November 29th that you came to Jersey City?

A. That is right.

Q. What activities did you engage in when you came here beside the movement to distribute circulars in Jersey City?

A. Organizing the unorganized.

Q. What organizing did you do?

A. Well I had only been here about three or four days.

Q. Yes.

A. And I merely accompanied other men to the meetings, men that were familiar with the situation.

Q. You were here sixteen days altogether?

A. That is right.

Q. Now, how many days did your activities in distributing pamphlets take you?

A. How many days?

Q. Yes.

A. There was only one I recall, that was in Jersey City.

Q. All right. What preparations were made for it? You had a meeting the day before, didn't you?

A. No, I think it was Wednesday of the week before that.

Q. You came here on the 22d, didn't you, of November?

A. Yes, sir.

Q. Then what did you do on the 23d of November?

A. The 23d? I think I attended a meeting of the Newark Industrial Union Council that evening.

Q. And what did you do on the 24th?

A. I just cannot recall.

Q. What did you do on the 25th?

A. I think we had a meeting, in regard to this meeting in Jersey City.

Q. On the 25th you had a meeting in Jersey City and that is the meeting that was addressed by Mr. McGinn and Mr. Macri?

THE COURT: I want to be very prompt about adjourning. I am going to adjourn now and meet again at two. After today—I have another matter on today at four o'clock—I will sit until five o'clock if that is agreeable to counsel.

MR. HAMILL: That is all right.

MR. FRAZER: Yes.

THE COURT: And before we adjourn I want to say to the persons in the court room that those who were here this morning will have to wait and give to those, apparently, who want to come in, a prior right this afternoon. The same benches will be reserved for the witnesses which were reserved before.

(Recess until 2 P. M.)

AFTERNOON SESSION.

MR. FRAZER: Mr. Foley. Mr. Foley, I believe, is still under cross-examination.

THE COURT: Mr. Foley, yes.

DANIEL J. FOLEY, resumed the stand.

THE COURT: Go ahead, Mr. Hamill.

MR. HAMILL: Yes, your Honor.

CROSS-EXAMINATION (Continued).

By MR. HAMILL:

Q. I think, Mr. Foley, you told us that you were placed in a car and then taken out again, is that right?

A. Yes, sir.

Q. And do you know what kind of a car it was?

A. Yes, it was a coach.

Q. I beg pardon?

A. A coach.

Q. Wasn't it an automobile?

A. Yes, sir. I thought you meant what type.

Q. You mean a sedan?

A. Yes.

Q. And then you showed someone a sheriff's courtesy card, is that right?

A. No, not there.

Q. Where was it you showed the courtesy card?

A. At the precinct.

Q. And a courtesy card from what sheriff?

A. Sheriff Andrew West of Marion County, Fairmount, West Virginia.

Q. And they treated you very nicely after that, is that right?

A. That's right.

Q. Some captain then told you that men were being distributed all over the City of Jersey City?

A. No, sir, I did not say that.

Q. What did you say?

A. I said they were of the opinion that men that were taken from the hall—were of the opinion that they were being distributed all over the city and it was my object to find just where these men were located.

Q. Did you find them in court afterward?

A. Yes, sir.

Q. When was it that you made that inquiry and received that answer? What time of the day?

A. Oh, possibly eight fifteen.

Q. And at nine thirty the court was opened, was it?

A. As near as I can recollect.

Q. Now, Mr. Foley, weren't you sent to New Jersey from West Virginia by the National Authority of the CIO for the express purpose of leading a band into Jersey City to defy the police and test the validity of that ordinance?

A. No, sir.

THE COURT: I have read the ordinance again, Mr. Hamill, during the recess, and I have compared it with the Georgia ordinance, in what I take to be the usual form, it says: "Without first obtaining written permission from the city manager." The Jersey City ordinance has no provision for obtaining permission from anybody. And furthermore, without wishing to interpret it, it seems to me you have relation to littering the street and has nothing to do with the distribution of literature from hand to hand. It says, "No person shall distribute or cause to be distributed or strewn about any street;" I would have said it didn't apply at all to the distribution of handbills unless they were strewn about the street.

MR. HAMILL: If your Honor please, that is the point. If your Honor will read the Griffin ordinance—I

am quoting from memory, your Honor, you will find that it is the widest kind of an ordinance that could be drawn. It says: "Nobody can distribute within the limits of the town of Griffin——"

THE COURT: Yes, without first obtaining written permission.

MR. HAMILL: Under the Griffin ordinance if one man handed another a paper in a court room or in a home or any place else in the town of Griffin without permission he would be violating that Griffin ordinance. Of course the Griffin ordinance is so widely drawn as to defeat its own purpose.

Now, I am not saying that ours does not come in within the scope of the Supreme Court decision but ours is a far better ordinance because there are restrictions and reasons in it.

THE COURT: No, I am not in the slightest criticizing your ordinance except in this respect, that you are criticizing this witness for not obtaining permission. I don't know how he could obtain permission, under that ordinance. I don't think, in the first place, it applied to what he wanted to do.

MR. HAMILL: Well, we say that you can't distribute and litter the streets. The Griffin ordinance said you must have a license. There is no provision for a license in our ordinance.

THE COURT: Well, this witness' testimony was that he had no purpose of littering the streets.

MR. HAMILL: I didn't bring that out. That was brought out on direct, and I just followed it up on cross.

THE COURT: I say you have criticized this witness for not obtaining a permit. A permit to do what?

MR. HAMILL: May I say to the Court, I am not doing it, but the other side insisted on bringing out the

fact that he got no permit, and of course I cross-examined on their direct. I think that's all, Mr. Foley.

MR. FRAZER: That's all, Mr. Foley.

THE COURT: Wait a minute, Mr. Foley. I don't know whether counsel for both sides--give heed to this, and if you don't want me to ask the questions, I won't do so.

MR. HAMILL: I can't hear your Honor.

THE COURT: If you don't want me to ask these questions I won't ask them, but I gathered from the pleadings, both the bill and the answer, that there might be some issue with respect to what political party these plaintiffs belonged and possibly with reference to what religious beliefs they held.

MR. HAMILL: If any.

THE COURT: If any. Shall I inquire from them?

MR. HAMILL: I have no objection.

MR. FRAZER: I have no objection.

THE COURT: Each one?

MR. FRAZER: I have no objection, sir.

MR. HAMILL: No objection.

THE COURT: All right. I will inquire. Perhaps it would be better for me to inquire because it is a delicate matter to inquire into a man's political and religious beliefs.

By THE COURT:

Q. Mr. Foley, I took it from what you said that you were born in this country; is that correct?

A. That's correct.

Q. What is your religion?

A. Irish Catholic.

Q. What political parties are you—I think the word is affiliated with, if any? Can you tell us?

A. I cast my first vote in 1916 for Woodrow Wilson. It has always been a straight Democratic vote.

THE COURT: Any questions?

MR. HAMILL: None.

MR. FRAZER: That's all, Mr. Foley.

THE COURT: I am going to ask those questions if counsel have no objection to each witness called for either side—unless there is objection.

Is that all then from this witness?

MR. FRAZER: That's all.

MR. HAMILL: That's all, if your Honor please.

MR. FRAZER: Mr. Clendennin.

DAVID L. CLENDENNIN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Clendennin, what is your occupation?

A. I am the national treasurer of the Workers Defense League.

MR. HAMILL: The national what? Will you speak a little louder, please? It is hard to hear over here.

THE WITNESS: Certainly, Congressman. I am national treasurer of the Workers Defense League.

Q. How did you have occasion to be in Jersey City on November 29, 1937?

A. That was one of the occasions on which I had business in Jersey City.

THE COURT: Just a minute, Mr. Frazer. I am going to follow the same procedure with this witness.

MR. HAMILL: Will you ask him his address, your Honor?

THE WITNESS: It is in the record.

THE COURT: I suppose you still reside at Ardsley-on-the-Hudson, Westchester County?

THE WITNESS: I do.

THE COURT: He has been a witness, you will remember, before, Mr. Hamill.

MR. HAMILL: I remember, yes.

By THE COURT:

Q. Now I want to ask you, what is the Workers Defense League? You see, we don't know about those things, Mr. Clendennin.

A. Well, the Workers Defense League, may it please the Court, was organized about two years ago when it became apparent that workers who were gradually seeing the need for union organization were being subjected to mistreatment, terrorism and other forms of official brutality on the part of local organizations.

Q. What is it, incorporated or unincorporated?

A. It is unincorporated. Do you mean does it have a charter in any state?

Q. Yes.

A. No, no, it has no charter in any state. Its national offices are located in New York City.

It became quite apparent in the course of the experience of labor organizers and others with whom I have had connection——

MR. HAMILL: Now, if your Honor please, I object.

THE COURT: Yes, I didn't ask you that.

THE WITNESS: I thought you asked the purposes of the Workers Defense League.

THE COURT: No, I asked you what it was, not what its purposes were.

THE WITNESS: Well, it is an organization which is designed to protect the rights of workers, Mr. Hamill.

MR. HAMILL: Now, may I inquire——

THE COURT: Well, I think you should wait.

MR. HAMILL: Well, never mind.

THE COURT: Go ahead, Mr. Frazer.

By MR. FRAZER:

Q. Now, you say you did have occasion to come to Jersey City the day of November 29, 1937?

A. Yes, that was one of the occasions.

THE COURT: I think we ought to have something else about him. You are a graduate of Yale?

MR. FRAZER: I think the Court knows him better than I.

MR. HAMILL: Mr. Clendennin was in the cavalry in the World War.

Q. Where did you come from on this day?

A. On this particular date I came from Pittsburgh, where I spent the week end.

Q. Did you come in company with anyone?

A. Yes, sir; I was in company with Mr. Gilmartin, who is on the National Executive Committee of the Workmen's Defense League and our publicity director at the time.

Q. Who else?

A. Sidney Hertzberg.

Q. How did you come to Jersey City?

A. Of course the Workers Defense League, as I explained a moment ago, is organized to protect the rights of workers. It has been my personal experience that the rights of workers were constantly being interfered with in Jersey City.

THE COURT: You may not do anything but testify to facts, please.

THE WITNESS: I was trying to explain why I was in Jersey City on that date. Since it is part of the function of the Workers Defense League to protect the rights of workers and it was obvious from newspaper reports——

MR. HAMILL: I object to him testifying to anything from newspaper reports.

THE COURT: Yes. You must not do that.

Q. You came to Jersey City, in any event, no matter how you came to be there?

A. I came to see whether the police conducted themselves according to law or not.

Q. Well—how did you come from Pittsburgh?

A. By train.

Q. Where did you get off?

A. I got off at Newark.

Q. At what time?

A. It was about six o'clock in the morning.

Q. How did you go from there to Jersey City?

A. Well, after getting off the train, as I recall it, we washed up in the station at Newark and came in by tube. We got off the tube at Grove and Henderson——

Q. Did you have any luggage with you?

A. Yes, we had our overnight suitcases.

Q. Did the other men have anything besides suitcases with them, do you remember?

A. I believe Mr. Hertzberg had a portable typewriter with him or something of the sort and Mr. Gilmartin may have had a brief case. I, myself, just had my suitcase.

It was our intention to leave these luggage, to check them, if there were a locker available——

MR. HAMILL: I object to what his intention was. We want to know what the facts were as they came under his senses.

THE COURT: Yes, confine yourself to the facts.

A. Well, we looked for a locker because we wanted to leave our luggage, but seeing none——

MR. HAMILL: I object to his giving his reason why he wanted to leave his luggage.

THE WITNESS: It is part of the picture.

Q. You did not leave your luggage?

A. No, we were forced to take it with us and we proceeded down Montgomery Street. It was gradually getting dawn about this time and everything seemed to be quiet—and in fact everything was quiet except at every block there were policemen stationed.

We arrived—walking down Montgomery Street we arrived at 76 Montgomery Street, where the CIO organizers were to meet us. When we got there there seemed to be no one about but when we finally got there we saw there were two men standing in the doorway. One of these was identified as John Holley, organizer for the textile workers, and Mr. Edward Levinson. We greeted them casually and started when suddenly Mr. Levinson said, "Get inside quick, here come the policemen." Naturally, as a result of this we went inside as fast as we could, through these revolving doors. I was the last one in, having some difficulty with the suitcase and the other two were ahead of me going up the stairs.

I got about half way up the stairs when I was pulled from behind, virtually pulled down this stairway. When I came down to the bottom I saw I was in the grip of a plain clothes man and I inquired of him whether he was a city detective or a private detective, meaning by that a private company detective. With a grin he said, "Both." I then determined that I would demand his arrest of whoever was in charge.

MR. HAMILL: Never mind what you determined. Not what he determined, what he did.

A. Well, that determined my action, Mr. Hamill.

MR. HAMILL: I know it determined your action, but in court you may only testify to facts. You cannot give us the operations of your mind.

MR. FRAZER: May I ask that Mr. Hamill do not argue with my witness. If he has any objection he can address it to the Court.

MR. HAMILL: Well, he is a very intelligent witness and he gets the point of the suggestion, and that is the only reason I did it.

THE COURT: Go ahead.

A. We then proceeded through the revolving door where I demanded to know who was in charge. Another man in plain clothes, an overcoat and hat, came up and said he was. I demanded to know who he was and insisted at the time that he put this man who had taken me unlawfully into custody, put him under arrest. This person who said he was in charge then said he was a deputy chief and I demanded to know by whom he had been deputized. He simply didn't answer that but pulled out a badge which said on it "deputy chief" and said, "I am Charles Wilson."

MR. HAMILL: Charles Wilson?

THE WITNESS: Deputy Chief Wilson.

At this point these men who were all gathered around during the repartee between myself and Chief Wilson, had taken my suitcase, thrown it down on the sidewalk, had opened it and were going through it.

I insisted that this came under the Constitution of the United States as an unwarranted search and seizure. They simply laughed and said there was nothing in it of any particular import. There was simply clothes, a shirt or two, toilet articles and some pamphlets which the Workers of Tampa published, dealing with the unlawful acts of police of Tampa, Florida.

The deputy chief said, "O. K. boys, let him go and we gathered up our belongings, including the suitcase, and proceeded upstairs to the meeting hall of the Boot and Shoe Workers Union.

Q. Mr. Clendennin, do I understand that the treatment which you have described as having been meted out to you was also meted out to Mr. Gilmartin and Mr. Levinson?

A. Their belongings were also searched.

MR. HAMILL: May I object at this time for the purpose of saying this: does he know what happened to those two men? Did he see it? If it will shorten up the testimony I have no objection to an answer to that question.

MR. FRAZER: The three of them were together, as I understand it, Mr. Hamill.

MR. HAMILL: If they were, all right. Were the three of you together?

THE WITNESS: We were right together. I was naturally more interested in what was going on in my own suitcase than what was going on in the others.

Q. All right then. You were permitted to go in again?

A. That is right.

Q. And what happened then?

A. Well, we went upstairs to the meeting hall and already the meeting was in progress. My purpose——

Q. Never mind what your purpose was. Say what you did.

A. I might say that I was not distributing leaflets that day.

MR. HAMILL: I object. That is expressing his purpose in another way.

THE WITNESS: Well, I did not go into the meeting. I simply heard the discussion through the doorway and I stood there with Mrs. Parker—rather Miss Cox, now

Mrs. Parker, Mr. Parker and one or two other people who were there.

We, of course, saw the pile of leaflets on the table. They were there to be given out. At least, I—well, they were there. We took them up and examined them but left them—I did, at any rate. There was considerable confusion in the hall. There were forty-five, fifty people, and eventually, why, about a quarter to eight, a quarter to seven, the organizers, the distributors, came out of the hall and went out the door.

Q. Now, Mr. Clendennin, did you see the leaflets at that time?

A. I did.

Q. I show you Exhibit P-1 and ask you whether that is it, whether you can identify it as one which you saw.

A. It was a leaflet advertising a meeting to be held the following Friday.

Q. (Exhibit P-1 handed to the witness.)

A. Oh, yes, this is it. I examined it carefully at the time. I was interested, naturally, in the wording of it.

MR. HAMILL: Let me look at it again, Mr. Frazer. It is a choice piece of record and lierature and invective.

(Exhibit P-1 handed to Mr. Hamill.)

Q. Now, at a quarter to seven you say they started to go out, is that it?

A. They started out.

Q. Then what did you do?

A. The observers remained off to one side while the distributors went out through the door and down the hall. When they had all left then we trailed along afterwards, since we were to see what happened. When we came out of 76 Montgomery Street the distributors had headed east on Montgomery Street toward the Harborside Building. They

were on the north side of Montgomery Street. I crossed over in the company of Miss Cox, Mr. Parker, one or two other observers, to the south side of Montgomery Street, and went along, also in an eastward direction. When the distributors arrived exactly opposite to the tube entrance they were met by a gang of plain clothes men and uniformed police. There were one or two cars in the way but it was very clear to me as an observer just across the street next to the bank building there that the plain clothes men were attempting a flying wedge tactic.

MR. HAMILL: Now, did you see them do this, Mr. Clendennin?

THE WITNESS: I did.

MR. HAMILL: All right. Go ahead.

A. (Continuing.) Towards the ferry building. They proceeded for I should say about twenty feet or so and then there was a sharp cry, more of a command, I can't say what it was—it was a bark—and they stopped. There was great confusion, some shouts, somebody had been arrested, and I crossed over then to the north side of Exchange Place the better to observe exactly what was going on, if any assaults were taking place. I saw no one assaulted at that time but did observe a leaflet lying on the ground, and since littering of the streets is, in my opinion, an uncleanly act——

MR. HAMILL: Oh, now, I object.

A. (Continuing.) Well, I picked up the leaflet.

MR. HAMILL: I object to what his opinion is.

A. (Continuing.) I picked up the leaflet. At this point a plain clothes man, a young man with a scar on his right cheek, I think I could identify him, came over and grabbed me by the arm. I pushed or shoved the leaflet into my pocket. He reached in my pocket and took it out. At this point Mr. Parker came over and this plain clothes man gave him a very sharp blow in the pit of the stomach, which

caused him to double up in pain. I asked the plain clothes man if I were under arrest. He said, "Sure." I said, "All right," and he started up the street with me in a westward direction. As we went along he said nothing but I told him that his actions were simply playing into the hands of the CIO.

MR. HAMILL: I object to what he told the policeman.

MR. FRAZER: It is part of the whole res gestæ.

MR. HAMILL: I object.

MR. FRAZER: This is a conversation with a policeman of Jersey City.

MR. HAMILL: I know, but not what he told the policeman; that doesn't make any difference. What the policeman said to him may be evidence, but when he said it it is a self-serving declaration. The other would be a declaration against interest.

THE COURT: Sustained. Apparently it was some advice that was given.

MR. HAMILL: Pardon me?

THE COURT: Sustained.

A. (Continuing.) I was advising him that he was acting contrary to the interests of Jersey City.

MR. HAMILL: I object. I object to what he was advising him.

THE COURT: Just say what he said to you, if anything.

A. (Continuing.) Finally we got out of this tube station and he said nothing but simply let me go. He went back then towards the group. I went right after him. At this point my attention was directed by other people looking in the same direction towards the bank building on the

south side of Exchange Place, and there I noticed Mr. Macri and Mr. Gilmartin among others, whom I didn't know at the time but I did know these two definitely, were there, in the custody of an officer. As I came back to the main entrance, the distributors, those who had not been arrested, went back in a westward direction along Montgomery Street. After looking over the situation, seeing that there were no more leaflets being distributed, I also went back after them. At 76 Montgomery Street we went inside and upstairs again to the Boot and Shoe Workers Union meeting place. There a meeting took place, a check-up of those not arrested. Following this the distributors went down out of the Union meeting hall down the stairs into the lobby, but in the lobby the revolving door was blocked.

MR. HAMILL: Do we understand you were with them at the time?

THE WITNESS: I was coming after them; as an observer I was in the rear guard.

MR. HAMILL: Did you see these things?

THE WITNESS: I saw these things; when I came down the stairs, the CIO people were all massed in the lobby. This is what I saw, Congressman. They were unable to get out, and on the outside I saw through the glass pane of the revolving door Deputy Chief Wilson giving—speaking, I don't know what he was speaking; he was in the act of speaking; I could see his mouth moving; to the plain clothes men who were grouped around him. The CIO people next, nearest to the door, continued to make attempts to push it so they could get it. But the door was blocked. This took place five or ten minutes, and then the door was released and one man was let out. As he came out a line was formed, a gauntlet, as the expression is——

MR. HAMILL: A what?

THE WITNESS: A gauntlet. You know the expression, running the gauntlet.

MR. HAMILL: Oh, a gauntlet.

THE WITNESS: That's right.

A. (Continuing.) —was formed of plain clothes men, and as these men came out one by one they were forced down this gauntlet to a car which was parked at the curbstone, not a police car, a civilian car. As they were put in the cars two or three, as many as the car could accommodate, together with the plain clothes men, the car would drive off. I could see this very distinctly. And then another car would drive up, more men, two or three, let out, put in the cars and driven off. I was rather concerned as an official observer——

MR. HAMILL: Well, never mind how you were concerned. Just tell us what you saw.

A. Well, I meant to say I was concerned in the sense that——

MR. HAMILL: Well, don't tell us whether you were concerned or not.

A. (Continuing.) I wanted to be on the outside.

MR. HAMILL: No.

A. (Continuing.) So I left my pamphlets——

MR. HAMILL: I object to what he wanted to be. Were you on the outside?

THE WITNESS: I was on the inside.

MR. HAMILL: Yes.

THE WITNESS: During this proceeding, observing this through the glass door.

MR. FRAZER: I think Mr. Hamill is getting a little bit beyond himself, causing a little obstruction to my witness.

MR. HAMILL: All right.

Q. What did you do?

MR. HAMILL: Then I will make my objections. The point is well taken. I will make my objections then to the Court. I thought we would save time.

THE COURT: Tell us what you did.

THE WITNESS: Yes.

A. (Continuing.) Well, I left my leaflets. I had one or two leaflets in my hand, undecided whether to distribute them or not. At any rate, I left them inside on a radiator in the lobby, to facilitate my going out. As I went out I was forced to stop just outside the revolving doors and was searched. Finding no leaflets I was let through.

Q. What did the search consist of?

A. I believe the policeman here would call it frisking. That is, you put up your hands and they go through your pockets.

MR. HAMILL: I object to that, what the policemen would call it. What did the search consist of, is the question.

THE COURT: Yes, yes. Please answer it.

A. Well, I held up my hands and they went through my pockets.

Q. Then what happened?

A. I had no leaflets. As I explained, I left them inside, previously. So I was simply shoved aside through the gauntlet to the west. There I immediately stopped to observe what was happening. I saw then Mr. Gilmartin and Mr. Hertzberg come out through the gauntlet. They were also searched, their leaflets taken away, and they were put into a car.

Q. Now, what did the search of Mr. Gilmartin and Mr. Hertzberg consist of?

A. The same process. They were put into a car, a civilian car, and I took down the number of that car. I made a note of it and it is in my affidavit. They were driven off.

Q. Do you remember what the number was?

A. I beg your pardon?

Q. Do you remember the number?

A. I don't recall the number at the moment. It was a Hudson County—an *H* number.

Q. Well, if I showed you this affidavit which you have signed would it refresh your memory?

A. I made a note of it at the time and made my affidavit immediately following the circumstances.

MR. HAMILL: Let me see the paper before you give it to the witness, Mr. Frazer, if you please.

MR. FRAZER: It is his affidavit.

MR. HAMILL: Well, may I look at it?

MR. FRAZER: No, I don't think so.

MR. HAMILL: I have the right to look at it to know whether he can use the document to refresh his memory.

MR. FRAZER: You have no right to look at my notes, my witness' testimony.

MR. HAMILL: I have a right, if the witness is going to use notes——

THE COURT: Is that an affidavit?

MR. FRAZER: This is an affidavit. I asked him whether his memory would be refreshed by referring to the affidavit, as to this number.

MR. HAMILL: That is not the legal rule. The legal rule is first of all, has he an independent recollection outside of the document.

THE COURT: He said he had not, previously.

MR. HAMILL: Then I have a right to see what it is, what is in the document that he is going to testify to.

THE COURT: Yes, I think so. I think he has the right.

MR. FRAZER: To examine the document?

THE COURT: Yes.

THE WITNESS: Just as to this number.

MR. FRAZER: Not as to the whole subject matter of the document.

THE COURT: No, no.

MR. HAMILL: But the subject matter on which you are going to examine him, Mr. Frazer.

MR. FRAZER: Very well. That's this number, sir. H-14365.

MR. HAMILL: Well, if that is all you are going to put in, why don't you state it?

MR. FRAZER: I will be very happy to. I thought you would object.

MR. HAMILL: All right. There are some things I will let go by.

MR. FRAZER: The number is H-14365 on your affidavit.

Q. Is that your recollection as just refreshed?

A. To the best of my recollection that is the proper number. After they had been put in this car, they too were driven off. And immediately after them an organizer——

Q. Might I ask who was in the car with them, if you noticed?

A. Some policemen, plain clothes men.

Q. And how many, do you know?

A. Three. Immediately after them, another group of organizers came through this gauntlet. By group I mean two or three.

Q. Now, might I ask, interrupting you a moment, was this Mr. Gilmartin and Mr. Hertzberg?

A. Mr. Gilmartin and Mr. Hertzberg.

MR. FRAZER: I think I called the wrong number.

MR. HAMILL: I beg your pardon? All right, tell us what you want to prove.

MR. FRAZER: The number was on Mr. Gilmartin and Mr. Hertzberg H-17129. There were two numbers.

Q. Do you remember that, in your affidavit?

A. Yes, I took down every number of every car that I could identify. This, of course, was six months ago and I don't keep the numbers in my mind.

Q. Well, now, did you see a car in which a Mr. Harold Diamond——

A. I was about to describe that name. Mr. Diamond came out. Mr. Diamond was personally known to me, a personal friend, an organizer at that time with the Aluminum Workers of America, affiliated with the CIO. He too was forced into a car and driven off.

MR. FRAZER: Mr. Hamill, will you admit that that car number was H-14365, which I erroneously read for the other one?

MR. HAMILL: I will admit that the witness would testify to that.

MR. FRAZER: All right.

MR. HAMILL: Now, whether his recollection or his observation was incorrect, of course, I have a right to go into that.

MR. FRAZER: I don't mean to bind you.

MR. HAMILL: I mean I am not questioning his veracity. I am only questioning his opportunities for observation and his correctness in recording them.

Q. All right, Mr. Clendennin.

A. Following this procedure, when all these people, when finally the lobby had been cleared of the organizers and they had been taken off, I debated then with the other observers, Miss Cox, Mr. Parker and others—Mr. Foley, I believe, was also with us at that time; in fact, I am sure of it—as to what we should do. We then proceeded along Montgomery Street toward the police station to check on the arrests. When we got up to the police station, with which I was well acquainted, we were denied admittance. I looked around for these license numbers and I saw there the license number H-17129. That is the car with this plate on it; and I knew by that that Mr. Gilmartin and Mr. Hertzberg——

MR. HAMILL: No, I object to what he knew by that.

THE WITNESS: All right.

Q. That was the car in which Mr. Gilmartin and Mr. Hertzberg had been driven?

A. That was the car in which they had been driven.

While we were standing there the door opened and Mr. Hertzberg and Mr. Gilmartin came out in the custody of a man in plain clothes. They were taken over to the car, this same car, same license number, and I went up to the man who had Mr. Gilmartin in custody—that is, by the arm—and I said, "Is this man under arrest?"

The man in plain clothes said: "No, he is not." I said: "By what right, by what authority"——

MR. HAMILL: I object to what he said.

MR. FRAZER: Oh, I think this is part of the whole scene.

THE WITNESS: Oh, it is extremely important.

MR. FRAZER: It is an essential part of the whole scene.

MR. HAMILL: I know, but the scene has to be proved, painted legally.

THE COURT: Say what the man said, not what you said.

MR. FRAZER: Exception, sir.

THE COURT: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. Well, he refused to answer and he didn't say anything. He shoved Mr. Gilmartin and Mr. Hertzberg into this car and they drove off. I made particular note at the time, Congressman, that this car was not driven by any police officer but by a young man not even in plain clothes; he had simply a sweater on.

We then went back up the steps to the police station, seeking admittance. The police officer there, whose number I remember very well because it was an odd one, No. 1111, said, "You can't come in."

A little later, I won't say what I said to him, a little later he came to the door and he said, "Newspaper men can come in."

A Mr. Robert Ball, representative of the People's Press, was with us, and he started in. I too started in. The patrolman asked for my press card. I had none. He said, "Stay out." So I stayed out.

MR. HAMILL: That's what I would do.

A. (Continuing.) Shortly afterwards, a mere matter of five or ten minutes, Police Chief Walsh came to the door and with the utmost graciousness said, "Won't you all come in?"

I took advantage of his invitation. I had met the Chief several times before. And we went in and up to the court room.

Q. Now, before you went in did you see a Mr. Neil Brant there at all?

A. Mr. Brant was in a car whose number I also took down because I recognized it as an official Jersey City police car.

Q. That was MG-1679?

A. That had on it that license number.

When we went up to the court room the court room was empty; it must have been about eight-thirty. There was no one there. We talked, wondered what had happened to our people——

MR. HAMILL: I object to that, what you wondered about. Tell us what happened, please.

A. Eventually, Judge Botti came in; the trial procedure, so-called, started.

The prisoners are brought in. To the best of my recollection the first batch of five were charged with distributing leaflets contrary to a city ordinance. Following their arraignment, conviction and sentence to five days, seven others were brought in.

MR. HAMILL: I object. Just a minute—I object to him testifying to their conviction or their sentence because that is a matter which must be proven by the best evidence and the best evidence is the record of the court.

THE COURT: Mr. Frazer said he would have it.

MR. FRAZER: We expect to have it here before the afternoon is out, sir.

THE WITNESS: Following that I remained in the court room while seven other defendants were brought in and charged with unlawful assembly——

MR. HAMILL: I object to what they were charged with. All of this is a matter of record. They were brought in or came in.

THE COURT: We will have the record here.

MR. FRAZER: This portion, I might say, is not in our stenographic transcript as to the arraignment and holding for the Grand Jury. That, I take it, is not a court proceeding, a proceeding before the committee magistrate. It was not taken down by anyone that we know of. I do not wish to make any misrepresentation as to the extent of my transcript.

MR. HAMILL: There is an official court record, though.

THE COURT: There must be minutes, I assume.

THE WITNESS: Judge Botti officially denied a motion to have a stenographic report made of it, may it please the court.

MR. HAMILL: May I at this time make an objection that I would have made at the end of this witness' testimony, and that is, that he is not a party to this cause and I want to know for what purpose this testimony is given?

MR. FRAZER: Merely to offer evidence of the——

MR. HAMILL: Of the conspiracy.

MR. FRAZER: Yes.

MR. HAMILL: And the denial of civil rights in Jersey City. That is what he is here on the stand for.

MR. FRAZER: In pursuance of a concerted plan and conspiracy.

MR. HAMILL: Oh yes.

MR. FRAZER: I mean that is the purpose of the witness.

MR. HAMILL: Then I object to going on unless we know—the bill charges that there was a concerted plan and conspiracy. If he is put on for that purpose we shall not move to strike out his testimony.

THE COURT: That paragraph uses a word which I criticize, and I repeat my criticism.

MR. HAMILL: Charging conspiracy?

MR. FRAZER: It charges plenty of other things and it is perfectly obvious that I cannot prove all the paragraphs in my bill at one moment.

MR. HAMILL: In the ninth paragraph: The plaintiffs charge that the policy of the defendant is in pursuance of an unlawful plan and conspiracy to forbid all CIO meetings; that the defendants have intimidated owners of halls to prevent them from letting the same to the plaintiffs, the plaintiffs intend to hold peaceful and lawful meetings to discuss CIO organization.

Now if it is for the purpose of proving a conspiracy we do not wish to be considered as making a motion to strike it out.

MR. FRAZER: Mr. Hamill read to your Honor this morning a synopsis of some twenty other paragraphs in the bill which charge many other things besides this conspiracy.

MR. HAMILL: I did.

MR. FRAZER: As I said before, it is perfectly obvious that I cannot prove the whole bill in one sentence.

MR. HAMILL: No. Very well. But then may I ask, if it is not out of order—may I ask the court to ask counsel to what paragraph is he directing the testimony of this witness? Otherwise there is no materiality to this testimony.

THE COURT: I would assume the testimony had reference to the same facts that Mr. Foley testified to.

MR. HAMILL: That is in pursuance of a plan and conspiracy——

THE COURT: Illegal distribution of handbills. That is what I assume. I say again I cannot see any purpose for the use of the word "conspiracy."

MR. FRAZER: It is a plan, unquestionably, and we have evidence of that. If Mr. Hamill wants me to direct his attention to one paragraph which covers these allegations read paragraph thirteen of the bill.

MR. HAMILL: Yes, I will say this. Paragraph thirteen goes on to say the different things that were done, but all these things were in pursuance of a plan and conspiracy set out in paragraph nine.

Q. Now, Mr. Clendennin, I understand you to say that they were arrested. The others were charged with what?

A. The second group with unlawful assembly.

MR. HAMILL: What is that?

A. (Repeated by stenographer.) The second group with unlawful assembly.

Q. And what happened to that?

MR. HAMILL: I object to that. That is a matter of record.

THE COURT: The minutes of the court will show that.

MR. FRAZER: Exception

(Which exception was hereby allowed and sealed accordingly.)

(Seal)

Q. What did you do after that?

A. Well, as I was sitting in the court room—I am glad Mr. Hamill reminded me of it—through a vignette, a half-moon shaped window above the doorway coming into the

court room, I observed Commissioner Casey, whom I also knew very well by sight, Police Chief Walsh, and other people in plain clothes, watching the proceedings in the court. I smiled up at Commissioner Casey but he did not return the salutation. During the course of the trial I looked up every so often to see if they were still there and they continued to stay and observe the proceedings in the court in this clandestine manner until the final conclusion.

Q. What did you do after that?

A. After that I went outside. I met Mrs. Milgrim—her husband, Morris Milgrim, was one of the defendants in the unlawful assembly case. She asked me what had happened to him. I said I didn't know——

MR. HAMILL: I object.

A. —but would try to find out——

MR. HAMILL: I object——

A. —I went downstairs and inquired myself and was informed they were on the top floor—

MR. HAMILL: I object——

A. —in the prison——

MR. HAMILL: I object unless he tells us where he inquired and who informed him. He cannot tell us he went downstairs and saw some people on the street and got some information.

A. Oh, I didn't make myself clear, Mr. Hamill. I went down into the main section of the precinct station where there is a long brass rail and a bench where the sergeant sits or at times perhaps the captain. However, I inquired specifically in a room which was labeled Detective Bureau——

Q. Of a police officer?

A. Yes, sir, of a police officer.

Q. What did he inform you?

A. He informed me that these prisoners were in the jail on the top floor. I went out then and took the elevator and went up to the jail.

A police officer there in uniform told me—I don't know his rank, didn't take down his number—he said I would have to get permission of Chief Walsh before I could see the prisoners.

I then went down to the second floor where Police Chief Walsh has his offices. Mr. Walsh was not in. I spoke to the man in charge who told me that Mr. Walsh was downstairs on the first floor and I would have to see him. I was then anxious to see him and I went downstairs to the first floor, down again to the detective bureau, the same place I had been before and they told me that Mr. Walsh had gone back upstairs. So I went back upstairs, went into Police Chief Walsh's office. He was there in the doorway and said, "Come in, what can I do for you?" I went in. I stood in the room at his desk with his pictures under the plate glass and spoke to him and he said he thought the prisoners had been taken to the Hudson County jail by this time. I said, "Well, all right, I will go up there and——"

Q. Did you?

A. I left at that point. I went outside. Mrs. Milgrim was waiting, and together with her and Miss Delcassi and one or two others, we went up to the Hudson County jail, took a bus.

At the jail I inquired of the man in charge as to the whereabouts of these prisoners. He said they had come in. I went to the phone, called up the offices of Isserman and Isserman, and inquired about getting bail for these men so that they could get out. I spoke to Mr. Abe Isserman, if I am not mistaken——

MR. HAMILL: Now don't——

Q. Did you make arrangements for bail? Were they admitted to bail?

A. They were not admitted to bail because the man in charge informed me——

MR. HAMILL: I object. They were not admitted to bail. I object to anything further.

Q. Where was this, at the jail?
A. At the jail.
Q. What did he say about seeing——

MR. HAMILL: I objec to what the man at the jail said.

THE COURT: Yes. There were fromal legal proceedings looking toward bail. I think we should have it proved.

MR. FRAZR: The bail had already been fixed, I understand.

THE COURT: Why I assume the minutes of Judge Botti's court would show that.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now, you came to Jersey City about two thirty on the morning of November 29, is that right?

A. No, Congressman, I testified I came to New Jersey shortly after six o'clock on the morning of November twenty-ninth.

Q. What time did you arrive at Grove and Henderson Street?

A. Shortly after six in the morning.

Q. And then you went down with your suitcase, carrying your suitcase to 76 Montgomery Street?

A. That is correct.

Q. And you went upstairs to the meeting held in the hall of the Boot and Shoe Workers—is that the name?

A. That is right.

Q. Boot and Shoemakers organization?

A. Boot and Shoe Workers Union.

Q. What floor was that on?

A. Second floor, I think.

Q. You went up one flight of stairs to the hall?

A. Yes.

Q. And that was about what time?

A. About six thirty, I suppose, between six twenty-five and six-thirty, in that neighborhood.

Q. Did you say there was anyone there at the time?

A. Yes.

Q. About how many?

A. About fifty.

Q. About fifty were there. And they made arrangements then to go out and distribute these pamphlets, did they, or circulars?

A. I testified, sir, that there was a meeting in progress in this hall but I did not attend it. I was an observer.

Q. You cannot tell us then what you did at the meeting then, is that what you want us to understand?

A. Yes. I don't know what decisions they made.

Q. Then you came downstairs and you were searched?

A. No.

Q. Your baggage was searched?

A. When we went in, before we even went upstairs, before we even got into the building.

Q. Your baggage was searched?

A. Yes, I was grabbed from behind and pulled down the stairs. You will recall I testified to that.

Q. Then you saw the different persons whom you have mentioned, and others, being put in automobiles and taken away?

A. Well, Congressman Hamill, I am sorry if I didn't make myself clear.

Q. You may have made yourself clear and I didn't catch your answers or your remarks. I am asking you to give——

A. There is a sequence of events which I am anxious to make clear. When we came down to 76 Montgomery Street from the Grove Street Station, when we came there all was quiet.

Q. I want, if possible, to make a resume or digest of the testimony, and if I am wrong you can correct me. Now you came from the Grove Street Station to 76 Montgomery Street?

A. That is right.

Q. And you waited there until forty or fifty people got out of the meeting, is that right? There was a meeting in progress?

A. You will have to define what you mean by "there."

Q. At 76 Montgomery Street, second floor.

A. On the second floor?

Q. Wherever you were.

A. We were at all places at various times.

Q. When you got to 76 Montgomery Street and went upstairs——

A. After being searched we went upstairs.

Q. Yes, to the hall of the Boot and Shoe Workers Union?

A. Yes, and there was a meeting in progress at the time.

Q. And while the meeting was in progress where were you?

A. I stayed in the anteroom.

Q. All right. And after the meeting was over you came downstairs?

A. That is correct.

Q. When you came downstairs you went out on the street, did you?

A. Following the distributors, that is right.

Q. And then you saw a number of people being taken away in automobiles?

A. No, that was following the distribution.

Q. All right; tell us what happened after that.

A. After what?

Q. After you came out of the door at 76 Montgomery Street.

A. The distributors were down toward the Harborside Building.

Q. They went down then until they got in front of the tunnel entrance, about?

A. The tube entrance, you mean?

Q. And that is where——

A. The flying wedge formation took place.

Q. You spoke about a flying wedge, then you came back to the police station——

A. I then came back following the distributors who preceded me to 76 Montgomery Street.

Q. To the police station?

A. No, no, that was some time after.

Q. All right, where did you go to?

A. I followed the distributors who had gone back to 76 Montgomery Street. I followed them back to 76 Montgomery Street.

Q. You followed them back to 76 Montgomery Street after they went down to the tunnel, the entrance to the Hudson Tubes?

A. That is right.

Q. And these events occurred to which you have testified, the distributors then came back to 76 Montgomery?

A. That is correct.

Q. Then after they were at 76 Montgomery they came out again——

A. They tried to but were kept from coming out.

Q. And is that when they were put in automobiles, you say?

A. They were kept from coming outside.

Q. But afterward they were let out?

A. Afterward they were let out. You used the right expression. They were let out by the man in charge.

Q. So your testimony is, according to you, they were let out?

A. They were let out by the man in charge.

Q. And they were put in automobiles?

A. They were forced in automobiles.

Q. And after that did they go to the police station?

A. I have no means of knowing where they went with the exception of one man whose name I don't recall.

Q. Did you go to the police station?

A. I did.

Q. And afterwards you came to court?

A. That is correct.

Q. And attended the proceedings?

A. Both of them.

Q. And you say Chief Walsh and Commissioner Casey looked in through a window at the proceedings?

A. Among others, they were there.

Q. They were not doing anything else except observing the proceedings?

A. That is correct.

Q. Were you arrested?

A. No. I have never been arrested in Jersey City.

Q. I beg your pardon?

A. I have never been arrested in Jersey City. I would like to have that right.

Q. Now, Mr. Clendennin, you came there in order to distribute or assist in the distribution of these pamphlets regardless of the ordinance, is that correct?

A. Commissioner——

Q. Yes or no.

A. I have testified already that I came there to observe their actions. Not to distribute nor to assist in the distribution.

MR. HAMILL: May I ask the stenographer to read that question? I think if Mr. Clendennin will simply answer the question as simply as possible we will make much better progress.

(Question repeated by stenographer.)

A. That is incorrect.

Q. In what manner is it incorrect?

A. Because I have previously testified as to the fact that I was there to observe what went on, not to distribute nor to assist in the distribution of any leaflets, regardless of any ordinance there may have been.

Q. Do you deny having come there to take any part in this distribution?

A. That would depend upon your definition of what an observer's duty is. If you consider an observer as part of the distribution, then I was. If you consider an observer simply has no part in the distribution, then I was not. That would be up to you.

Q. Nobody is quarreling about the meaning of the word "observer."

A. I came there to observe what went on.

Q. You came to look at what was going on?

A. That is right.

Q. Did you come there to take any action of any kind?

A. Oh no. We were taking notes of what went on.

Q. I mean in the matter of distribution?

A. Absolutely not.

Q. Now, did anybody tell you in Pittsburgh to go to Jersey City?

A. Pittsburgh?

Q. Yes.

A. No.

Q. Didn't you say you came there from Pittsburgh?

A. Yes, but nobody had told me in Pittsburgh to go to Jersey City.

Q. You came of your own volition?

A. I was going to make—all right.

Q. Go ahead.

A. My own volition? It is part of my duty.

Q. You came here for the purpose of discharging what you considered to be your duty as a member of the organization, the Workers Union, is that right?

A. As an officer, as an appointed officer of the Workers Defense League, that is right.

Q. You are not a party in this cause?

A. Not this particular one, though I have other causes.

Q. All right. I will withdraw the question. The record will show that.

Q. Well, you are not an interferer in this cause, are you?

A. I am not a dictionary. I would have to ask for the legal definition of that, Senator.

Q. Did you come here under subpœna?

A. Here today?

Q. Yes.

A. Yes.

Q. You mean you did not come here of your own volition?

A. To this court today?

Q. Yes.

A. I would not have missed it for anything.

Q. I didn't catch that.

A. I say I would not have missed this proceeding for anything.

Q. That is, you are delighted to be here, to give this testimony?

A. I am delighted to be here to give this testimony, yes, as part of the case.

MR. FRAZER: Oh now——

Q. You said, "I would not have missed this for anything."

MR. FRAZER: He is here both voluntarily and involuntarily, that is the way I take it.

Q. When you said, "I would not have missed this for anything" what did you mean?

A. I mean that even if I had not been subpœnaed, as part of my duties to observe, the observation of workers'

rights, I would have been here as a spectator in this court to watch your actions and those of Dean Frazer.

Q. And as a voluntary witness?

A. Even if I was not a voluntary witness I said I would not have missed it for anything. I would have come as a spectator, Mr. Hamill. I am very glad to testify, naturally.

Q. Did you know that they were going to distribute circulars on November 29th in Jersey City?

A. Did I know of my own knowledge?

Q. Yes.

A. No.

Q. Well, had anybody told you?

A. That is what I would call common knowledge.

Q. Well then you did know what they were going to do?

A. Well, Mr. Hamill, it all depends upon your definition. Nobody has told me specifically. Nobody has come up to me and said, "Mr. Clendennin, people, CIO workers are going to distribute leaflets in Jersey City on November 29th."

Q. Let me state it this way: when you arrived and shortly before you arrived at Grove and Henderson, did you know that you were going to——

A. Observe.

Q. —76 Montgomery Street, and that men were gathering there for the purpose of distributing circulars?

A. Oh, of course. I was there to observe their actions——

Q. That is all, you did know?

A. Yes.

MR. HAMILL: I think that is all.

THE COURT: I will not ask this witness the questions I asked the other witness.

THE WITNESS: I would be very glad to——

MR. HAMILL: I have no objection.

THE COURT: He is not a party.

MR. HAMILL: But I do not see the purpose of it.

THE COURT: I will ask it only of the parties, members of the party organization, that is all.

(Witness excused.)

DAVID SILVERSTEIN, called and sworn on behalf of the plaintiffs, being examined, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Where do you live?

A. 2935 Ocean Parkway, Brooklyn.

Q. What is your business, Mr. Silverstein?

A. Business agent of Local 73, United Shoe Workers of America.

Q. Where does Local 73 hang out?

A. 76 Montgomery.

Q. What is its territory?

A. Our territory is Jersey state.

Q. The whole of the state?

A. The whole of the state, yes, sir.

THE COURT: I take it it is a labor union, is that right?

THE WITNESS: Correct.

THE COURT: What organization does it belong to?

THE WITNESS: United Shoe Workers of America.

THE COURT: Is it a craft or an industrial union?

THE WITNESS: An industrial union affiliated with the CIO.

Q. And how long have you held the position with Local number 73?

A. Two years now.

Q. Your operations include Newark and other cities, as well as Jersey City?

A. Correct.

THE COURT: What is your own trade?

THE WITNESS: My own trade, I am a shoe worker.

THE COURT: You are a shoe worker yourself?

THE WITNESS: Yes, sir.

Q. Have you any shops which are united in Jersey City?

A. Yes, we have three shops in Jersey City.

THE COURT: State where they are.

Q. What are the union shops?

A. The Paramount Slipper Company, 150 Bay Street, Jersey City, the Restful Slipper Company, 31 Wilkinson Avenue, Jersey City, the Norwalk Slipper Company, 48 Essex Street, Jersey City.

Q. How long have they been unionized?

A. They have been unionized over two years now.

Q. Now, that was before you came as business agent?

A. Yes.

Q. Now from the time that you first came—that would be back in 1935, would it?

A. I became business agent in 1936.

Q. Did you have any meetings of your union members?

A. Yes, we had members of our union, shop meetings and local meetings.

Q. Did you rent any business halls?

A. Yes. Our permanent headquarters was the White Eagle Hall, 335 Newark Avenue, and we also rented for shop meetings the Polish Hall at Bay Street and Henderson Street.

Q. Any other halls you used?

A. For affairs we used the Columbia Hall on Ocean Avenue. I don't remember the address.

Q. When you say affairs, what do you mean, balls and things of that sort?

A. Balls, yes.

Q. What was the affiliation of the union when you first came, was it with the American Federation of Labor or the CIO?

A. When I first became business agent in 1936 it was the Boot and Shoe Workers Union, affiliated with the American Federation of Labor.

Q. Did you have the same headquarters?

A. Yes, 76 Montgomery Street, the same headquarters.

Q. When was the change or was there a change from the American Federation of Labor to the CIO?

A. In June 1937.

Q. Now from the time you came in as business agent, to June, 1937, was there any difficulty about your obtaining a hall or the like?

A. No, none whatever.

Q. Did you have any difficulty in obtaining halls?

A. After November 29th.

THE COURT: Go ahead, please.

By MR. FRAZER:

Q. Well, I was asking you whether you had any difficulties in obtaining halls prior to your affiliation with the CIO and you said, I think, not until November 29th; is that right?

A. Right, that's correct.

Q. 1937?

A. November 29, 1937. After that we had difficulty in getting—in fact, we couldn't get any hall after that.

THE COURT: Just a minute, please. Don't make that a general statement. Tell us the details of your difficulties and what you did.

THE WITNESS: All right.

A. (Continuing.) The week of November 29th, that same week, we had a local meeting, and that same evening——

THE COURT: I don't think anyone can hear you. Speak up.

THE WITNESS: I don't speak loud enough?

Q. Speak slowly, Mr. Silverstein, will you?

MR. HAMILL: If you will speak more slowly and speak louder, we can hear you better.

A. (Continuing.) The week of November 29th, that was on Thursday that same week, we had the last local meeting at that hall, the White Eagle Hall. I tried again to book for another local meeting with the owner of the hall, and she told me that——

MR. HAMILL: No, I object to what she told him.

MR. FRAZER: Your Honor, this is a very essential part of the res gestae.

MR. HAMILL: That isn't the res gestae.

THE COURT: Just a minute. Did you name a particular person that you asked to rent the hall? Did you?

MR. FRAZER: He said the manager of the hall, the White Eagle Hall.

THE WITNESS: The White Eagle Hall.

THE COURT: Give the name of the manager.

THE WITNESS: I don't remember her name.

MR. HAMILL: How are we going to rebut that?

THE WITNESS: There is a woman in charge there.

THE COURT: What?

THE WITNESS: There is a woman in charge of that hall, the White Eagle Hall.

THE COURT: What is her name? You can find it out, if you don't remember it, can't you?

THE WITNESS: I can find it out, yes.

THE COURT: All right.

By MR. FRAZER:

Q. What did she look like?

THE COURT: He said he could find it out.

MR. FRAZER: Well, perhaps Mr. Hamill will allow the witness to give that name and we will put it in the testimony, rather than to call the witness back for that purpose.

MR. HAMILL: I don't exactly get what you mean. You mean does he know the——

MR. FRAZER: He knows her but he doesn't know her name, the manager of the White Eagle Hall; she is the woman he has in mind. He doesn't recall her name.

I suppose what you want it for is by way of rebuttal.

MR. HAMILL: Suppose we wanted to subpœna that manager?

MR. FRAZER: Exactly.

MR. HAMILL: That is it.

MR. FRAZER: I will get the name and submit it to you.

MR. HAMILL: How would that help us? If he doesn't give the name? And this is very important.

MR. FRAZER: I will get the name for you, Mr. Hamill, and give it to you. Will that be satisfactory?

MR. HAMILL: Excuse me a minute.

(After conferring with associates.)
No, we cannot consent to that.

THE COURT: Consent to what, Mr. Hamill?

MR. HAMILL: That he testify that he met the manager. We want to know who the manager is.

THE COURT: Well, we will find out. That is what Dean Frazer said, that he would get the manager's name.

MR. FRAZER: I will consent that it all be stricken out if I do not give you the manager's name.

THE COURT: You see, we have no jury here.

MR. HAMILL: All right.

Q. Is she a stout, blond woman?
A. No, she is a short, skinny, dark woman.
Q. Then the picture I have is all wrong, isn't it?

MR. HAMILL: Are you speaking from your recollection or your knowledge?

Q. Well, Mr. Silverstein——
A. That manager of the hall told me that——

MR. HAMILL: No, I object, if your Honor please. At this point——

THE COURT: Well, what happened. Do I understand that you owned this hall or leased this hall or something?

THE WITNESS: We had no lease of that hall. We were holding our regular local meetings and also shop meetings at that hall, and after that——

THE COURT: How often did you hold those meetings?

THE WITNESS: About twice, sometimes three times during the month we had meetings.

THE COURT: And you paid for them, is that right?

THE WITNESS: Yes, that's correct.

THE COURT: How much did you pay for each meeting?

THE WITNESS: If it was a local——

MR. HAMILL: May I say this? That was up to November 29, 1937?

THE COURT: Yes.

THE WITNESS: For local meetings we paid $6, and for shop meetings $3 for meetings.

THE COURT: All right. Then you on a certain day—what day was it, do you remember?

THE WITNESS: From that week of November the 29th—I don't remember the date; it was December; since that date on, we could not get that hall any more.

THE COURT: This same hall, is that right?

THE WITNESS: This same hall, the White Eagle Hall; we could not get that hall any more.

By MR. FRAZER:

Q. Why not?

THE COURT: I suppose the manager refused to give it to you?

A. The manager refused to give us the hall on the basis——

MR. HAMILL: Wait, I object. Not on the basis. That is a conclusion, evidently.

Q. Well, what did the manager say?

THE COURT: What did she say?

A. The manager said——

MR. HAMILL: I object to what the manager said.

THE COURT: I will allow it. You may have an exception.

MR. HAMILL: Your Honor will grant me an exception?

THE COURT: Exception.

MR. HAMILL: It is pure hearsay.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What did she say, Mr. Silverstein?

A. I can continue?

Q. Yes.

A. The manager said that there is a man from the Court House of Jersey City has been down three times that week and warned her not to rent that hall any more to the Shoe Workers.

MR. HAMILL: I ask that that be stricken out, a man from the Court House came down.

THE COURT: Yes. Did she identify the man?

THE WITNESS: No, she did not identify the man.

THE COURT: Well, we will have to have the manager here then.

MR. HAMILL: I ask that that be stricken out.

THE COURT: I will just leave it in pending the calling of the manager. That would not be so if this were a jury case, of course.

Q. Where is this hall in relation to the Court House?

A. The Court House—I am not acquainted with where the Court House it. I could not say that.

Q. Now, what about Columbia Hall?

A. The Columbia Hall, on December 4th we had scheduled a dance for the United Shoe Workers of America, our yearly dance, and December 4th when all our people came to the dance——

Q. Now, wait a minute. What had you done in preparation for that dance, Mr. Silverstein?

A. In preparation for that we have made a contract with a band of music. We have also printed tickets and issued to all our members. We have also issued circulars, through the mail, to our members, informing them of this dance which is being held December the 4th on Saturday night. Then our members came to that dance at that evening.

Q. Did you have any arrangement for the rental of the hall?

A. Yes. We have made arrangement several weeks before for that Saturday night, with the hallkeeper.

Q. Had you paid any deposit on it?

A. No. That was——

MR. HAMILL: Now, if your Honor please, I don't want to be too captious——

THE COURT: No.

MR. HAMILL: —but on a thing like this, you see the witness only has to nod his head to answer those questions and the questions are purely leading.

THE COURT: Yes, I think they were leading.

MR. HAMILL: The question should be, what did you do.

THE WITNESS: All right.

A. (Continuing.) Several weeks before, we have made arrangements with the hallkeeper that we are going to have our annual dance at that hall.

THE COURT: And do you remember the name of that hallkeeper, Mr. Silverstein?

THE WITNESS: No, I don't remember the name of that hallkeeper neither.

THE COURT: Well, could you furnish us with that also, Dean?

THE WITNESS: I can furnish the name of that man too.

THE COURT: All right. Go ahead.

A. (Continuing.) We have not given him any deposit because previous dances that we held in 1936 and in 1935 we have made the very same arrangements with the hallkeeper, and at that night, when we came down to the dance, the hallkeeper—we find out the hall is closed on us. Of course, I went to the hallkeeper and asked him what the meaning of that. He told us that he can't give us the hall.

MR. HAMILL: I object to what the hallkeeper told him, if your Honor please.

THE COURT: He may answer it.

MR. HAMILL: Your Honor admits it?

THE COURT: Yes.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. The hallkeeper told us that he can't let us have the hall because we are a CIO affiliate.

Q. And who said you couldn't?

A. The hallkeeper.

MR. HAMILL: I ask that that be stricken out, for the sake of the record.

THE COURT: Yes.

MR. HAMILL: Your Honor will——

THE COURT: That should be stricken out.

MR. FRAZER: What is that?

THE COURT: That should be stricken out. That has no relation to these defendants.

Q. Did he say why the CIO could not have it?

A. He said that because we had that circular distribution, that was on a Monday, and this was following Saturday, because of that he said he cannot let us have the hall, he could not get a permit for our dance.

Q. Who refused him the permit?

A. That is what the hallkeeper told me, that he had to get a permit from the police department to hold the dance, that he can hold that dance at that night.

MR. HAMILL: Well, may I be understood as objecting to this whole line?

THE COURT: I think we will have to have this testimony from the mouth of the hallkeeper, Dean Frazer.

MR. HAMILL: This is a very important part of the case.

THE COURT: Yes. I will strike it out.

MR. FRAZER: I would ask an exception, sir.

THE COURT: Yes. Get his name and you can subpœna him.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. FRAZER: I don't know that I desire to call him as my witness, sir.

Q. What about the Polish Hall?

A. In the Polish Hall we usually had some meetings because the place there could hold over a hundred workers, a small place there that we used to get, and after the, following the, November 29th, when I wanted to book for shop-meeting, the hallkeeper told me that all the nights are taken, so I kept on asking him for over a month's time or period that I can book a night for any room, the large room, for which he charges ten dollars, or the small room, and he insisted on that all the nights, all these rooms are all booked. That was the statement of that hallkeeper of the Polish Hall.

Q. Who is he? Do you know his name?

A. No, I don't know his name.

Q. Can you get his name?

A. Yes, I can get his name.

MR. HAMILL: I ask that this be stricken out.

THE COURT: Get the man.

MR. HAMILL: Do I understand it is stricken out, if your Honor please?

THE COURT: Yes.

MR. FRAZER: I don't understand that the Court is striking out the testimony of the application having been made.

THE COURT: No, no, certainly not.

MR. HAMILL: Oh, no.

THE COURT: Of course not.

MR. HAMILL: Just as to what the manager or person told him.

MR. FRAZER: And that is subject to being connected up by bringing their names.

MR. HAMILL: Well, our objection is that his testimony is incompetent, that it is hearsay. Of course, if you produce the manager, then you will have direct testimony; but that this is not testimony, it is incompetent.

Q. Now, since November 29th have you tried elsewhere to get halls?

A. Since——

MR. HAMILL: Excuse me. I didn't get that.

MR. FRAZER: Have you tried elsewhere to get them?

A. Since November 29th I have had the executive board of the local assign a member of the executive board, which that member was Samuel Macri and Rudy Loreco, to go looking around for a hall in Jersey City, and the report that I got——

MR. HAMILL: I object to the report you got.

THE COURT: Yes.

A. The report I got from Samuel Macri, a member of our executive board——

MR. HAMILL: I object to the report he got.

Q. Well, have you succeeded in getting any hall?

A. I have not succeeded in getting any hall in Jersey City.

Q. Who was it that went out with Mr. Macri, on your appointment?

A. Rudy Loreco, a member of our executive board; R-u-d-y L-o-r-e-c-o, a member of the executive board of our local.

Q. Now, Mr. Silverstein, have you any knowledge of the conditions in the non-union shop, shoe shops and the slipper factories of Jersey City?

MR. HAMILL: I object.

THE COURT: Well, if he has.

MR. HAMILL: Sir?

THE COURT: If he has any personal knowledge of it.

Q. Any personal knowledge?

A. I have personal knowledge. There is at present three factories, three shoe factories, in the Interborside Building.

Q. What are they?

A. They are the Inter-Allied Slipper Company, Oxford Slipper Company, and Avon Shoe Company. These shops at present employ unskilled help from six to seven dollars a week, and they make them work from fifty to sixty hours a week.

MR. HAMILL: Now, your Honor, I object to that and ask that that be stricken out. Are we responsible for that? Do they hold us responsible for that?

THE COURT: You will have to call the shops themselves. I can't take his testimony.

MR. FRAZER: I think it is perfectly good testimony.

THE COURT: Oh, no.

MR. FRAZER: If the witness is cross-examined.

THE COURT: You will have to call the managers themselves.

MR. HAMILL: I ask that it be stricken out.

THE COURT: Subpœna their books, if that is so.

MR. FRAZER: I don't hear you.

THE COURT: Subpœna their books, if that is a fact.

Q. How long have those plants been in Jersey City, do you know?

A. The Oxford Slipper Company, in 1937 they transferred from New York, which was a union shop——

MR. HAMILL: If your Honor please, I object to all this.

THE COURT: You must not say something you don't know.

MR. HAMILL: He doesn't know anything about this except what he is told.

A. I know about it. I have been involved in it.

MR. FRAZER: He knows of his own information.

MR. HAMILL: He didn't say that, and it is evident that he knows only from what someone told him.

A. These facts I know, and I participated in them as a business agent of that local. When that shop went away from New York it was given over—at that time it was the Boof and Shoe American Federation of Labor union. That shop was then transferred from New York to Jersey district.

MR. HAMILL: I object on the ground that it is irrelevant to any of the issues in this case.

MR. FRAZER: I think it is very clearly relevant.

MR. HAMILL: Well, may I ask——

THE COURT: The only relevancy that I can see, Congressman, is if it is the contention of these plaintiffs that due to their organization they have improved labor conditions as contrasted with conditions where there was no organization, I think that would be relevant. That's all I think would be relevant.

MR. HAMILL: I mean what would it be relevant to?

THE COURT: I suppose it would be relevant to those paragraphs of the bill that ask for permission to conduct labor organization activities.

MR. HAMILL: Well, it is——

THE COURT: I think we are all safe in assuming that the object of labor organizational activities is to improve the condition of the working people.

MR. HAMILL: Yes, I agree with your Honor perfectly; but I mean I don't see exactly how the City of Jersey City or its Mayor or its police force or the members of the Commission are to be charged with a conspiracy by proof that these conditions existed.

THE COURT: Well, there would have to be further proof that they had interfered with the organization designed to improve the conditions. If they have not interfered, of course then it would be irrelevant.

MR. HAMILL: All right. If that is the view of your Honor I am perfectly satisfied.

THE COURT: But it will have to be shown——

MR. FRAZER: Yes, sir.

MR. HAMILL: But we are wandering so far afield here that we have got to keep the case within some kind of definite limits.

MR. FRAZER: I intend to connect this up, sir.

THE COURT: It would have to be shown more from the personal knowledge rather than from hearsay.

A. (Continuing.) That shop when it was transferred from New York district to Jersey district, it became under my jurisdiction. I went up to the manufacturer and I told them that he has to continue——

MR. HAMILL: I object to what he told the manufacturer.

THE COURT: Yes, you must not say that.

A. (Continuing.) As business agent it was my duty to see the manufacturer and insist that he should continue his

contractual relations with the union, which the manufacturer refused; and on this basis we put on a picket sign and that was the nearest place from the Harborside Building, that is on Montgomery Street, and these pickets, two men with pickets we put on, were by the police taken off, the signs, and were taken and put into the Hudson police station——

MR. HAMILL: Now, did you see——

MR. FRAZER: One moment, let him finish.

MR. HAMILL: I object on the ground he did not see it.

A. I saw it.

MR. HAMILL: All right, go ahead. That's where I am wrong. Go on.

A. (Continuing.) I put on the picket signs on these men and I watched these men picket. About ten minutes later, came over two police in uniforms and took off the signs and took these men and told them to get down in the tube station and go back to New York. I went over and told the police that these men are Jerseymen and he can't send them there, they belong to Jersey. So the police told us, well, then, keep away from here.

The following morning we did the same thing. We put on again men with pickets and the same thing repeated itself; after five minutes' picketing the policemen came over and took again off the signs. We did that, we practiced that for about two weeks.

Q. When was——

A. (Continuing.) And after that it came to court where we tried to get an injunction, on that Oxford case. After we finally got an injunction——

MR. HAMILL: If your Honor please, I object to all this as irrelevant.

THE COURT: Yes.

THE WITNESS: All right.

THE COURT: When it comes to talking about the courts, we will have to keep that out.

THE WITNESS: I will keep that out.

A. (Continuing.) I just want to add that the conditions at present in the Oxford relevant to the union shops in Jersey are that the workers, the unskilled workers, work from fifty to sixty hours——

MR. HAMILL: I object to this testimony.

MR. HERSHENSTEIN: Wait, wait, wait.

THE COURT: You must not say that. We will have to have the men who run the shop and their books here, if you are going to prove that.

What is the name of the man who owns that shop? That will save us trouble, maybe. Do you know?

THE WITNESS: Goodman.

THE COURT: Goodman?

THE WITNESS: Oh, no, not Goodman. I don't know the name.

Q. Gold?

A. Gold, that's right; Gold; Mr. Gold.

MR. FRAZER: Will you have Mr. Gold in court for us?

MR. HAMILL: No, I am not going to help you to prove your case. That's up to you. You have the laboring oar.

THE COURT: You can subpœna him, Dean.

MR. FRAZER: Yes, that's very true.

A. (Continuing.) I want to state if I am allowed——

THE COURT: Wait a minute, now, Mr. Witness. No one has asked you any questions.

THE WITNESS: All right.

Q. Now, this was the Inter-Allied you were speaking of?

A. Oxford Slipper Company.

Q. Oxford Slipper Company. And when was that?

A. 1937, at the beginning of 1937.

Q. Now, are there any representatives of the Jersey City police force about your headquarters at 76 Montgomery Street?

A. Very often.

Q. Have you seen them personally?

A. Yes.

Q. Would you be able to recognize him if you saw him, or them?

A. I would.

Q. Are they in plain clothes or in uniform?

A. Plain clothes.

MR. HAMILL: I object to this. There are officers around this court room now.

MR. FRAZER: I don't doubt it.

THE COURT: I don't see the point of this, Dean Frazer.

MR. HAMILL: I mean what is the difference whether they are or are not?

THE COURT: I will sustain it.

MR. HAMILL: Officers around 76 Montgomery Street.

MR. FRAZER: I simply wish to show that this place is under continuous surveillance. I think I have a right to show that.

MR. HAMILL: Well, even if it is, is there anything wrong about that?

MR. FRAZER: I think so.

MR. HAMILL: I don't.

Q. How often have you seen officers of that type about 76 Montgomery?

MR. HAMILL: I object to the use of "that type." Is it a word of derogation or a word of description?

MR. FRAZER: No, he described them as plain clothes men.

Q. They were plain clothes men, weren't they?

A. Yes.

Q. How often do you see them?

A. Practically every day.

Q. And what do they do when they are there?

A. Stay around, walk around.

Q. And how large a radius, how great a distance from your——

A. From the corner up about the middle of the block.

Q. And how long is that distance?

A. A few hundred feet.

Q. Now, did any of those officers whom you saw there participate in any way in this distribution on November 29th?

A. Yes. These are the men that participated on November 29th in putting the man into the cars and also in confiscating the leaflets; the same men.

Q. Who did they put in the cars on that day that you knew about?

A. From the Shoe Workers I have called upon volunteers to distribute leaflets and had the volunteer response from several, and after the distribution of the leaflet, these men reported back to the office, and I told them that they can go back to work.

MR. HAMILL: I object to what he told them.

THE COURT: Yes, please.

MR. HAMILL: Or to what they told him.

A. (Continuing.) These men going back to work, leaving their building at 76 Montgomery Street, and I also went along with them—five of us were taken in two cars, and we were taken out to Harrison and in Harrison we were put out.

Q. Now, let's get that. That was on November 29th?

A. On November 29th.

Q. What time, Mr. Silverstein?

A. That was around before nine o'clock.

Q. And who were the men?

A. The men, I don't know the men. You mean the men from our union?

Q. Yes.

A. Yes, I know the names.

Q. Who were they?

A. James Scrudato.

THE REPORTER: Will you spell it, please?

A. (Continuing.) James S-c-r-u-d-a-t-o. John Gotowsky.

MR. FRAZER: Spell that.

A. (Continuing.) G-o-t-o-w-s-k-y. Milton Felker.

MR. HAMILL: Spell Felker.

A. F-e-l-k-e-r. Isaac Rund, R-u-n-d, and myself.

Q. And what did they do to you?

A. And as we were leaving 76 Montgomery Street they put us in cars and they took us out to Harrison Highway.

Q. Well, were you distributing them?

A. Leaflets?

Q. Yes.

A. That was after the distribution of leaflets. And there are the numbers of the cars that we were in: H-43752; H-18820.

Q. Where were those men going when they left 76 Montgomery?

A. These men were going to work, and myself—I was going to the Central Shop, to one of our union shops, to settle a dispute.

Q. And did you tell the officers where you were going?

A. Yes.

Q. When they took you?

A. I told them.

Q. What did they say?

A. They said that they would take us where they pleased.

Q. Now, how far was it that they took you?

A. From 76 Montgomery Street they took us out to Harrison Highway.

MR. FRAZER: Harrison Highway, did you say?

THE WITNESS: Out in Harrison, on the highway.

MR. HAMILL: On the highway?

THE WITNESS: Yes.

Q. Now, how did you get back from there?

A. The people, my boss went to work——

MR. HAMILL: I object. What is the relevancy of how they got back?

THE COURT: Yes, sustained.

MR. HAMILL: Your Honor overrules the objection?

THE COURT: I have sustained it. Sustained, I said.

MR. FRAZER: I ask an exception.

(Which exception is duly allowed and sealed accordingly.

(Sealed)

MR. FRAZER: It seems to me that we have a right to show how these men had to get back to their work,

the means that they took after they had been thus illegally deported.

MR. HAMILL: Well, what would that add to your case?

THE COURT: I will sustain the objection.

MR. FRAZER: I will ask an exception. I am bowing to the Court's ruling.

THE COURT: Yes, you may have an exception.

Q. Have you had any other experiences with picketing in Jersey City except those that you have mentioned?

A. Yes. In 1936 we organized the Paramount Slipper Company. We had 90 per cent. of the workers out, and we put on a picket sign, a few of the workers wore picket signs. Police officers, uniforms, tore the signs off these men——

MR. HAMILL: Now, if your Honor please, at this point I object to this testimony as being too remote, unless it be for the purpose of showing a concerted plan and conspiracy.

MR. FRAZER: Well, it all is.

MR. HAMILL: That is what it is for?

MR. FRAZER: Oh, certainly, certainly.

MR. HAMILL: All right, if it is for that, let him go ahead so far as I am concerned.

A. These men were given a beating by the police officers and were torn off, the signs, and were taken down to the Hudson Tube Station at Grove Street and told to get back to New York. Some of them were from New York, but others were not from New York. They had to take the train to Journal Square and take a bus, to come back.

MR. FRAZER: Cross-examine.

A. (Continuing.) Then there is another instance.

Q. All right.

A. If you want me to continue.

Q. I beg your pardon. Another instance?

A. In 1937 the Uneeda Slipper Company, now a liquidated firm, no more exist, moved into the Harborside Building——

MR. HAMILL: This is an old case that he is going over now.

THE COURT: They went bankrupt, didn't they?

MR. HAMILL: Yes.

THE WITNESS: Yes.

THE COURT: In this court.

MR. HAMILL: I think they are now in the union, aren't they?

MR. FRAZER: Go ahead.

A. When that firm moved over from Brooklyn to the Harborside Building, and they have broken the contract with the union, at that time I was a Jersey representative, had the shop, the case was transferred to me from New York, and I put on a picket sign there, and there too the police took off the signs and told these men to get away from there.

Q. What did the signs have on them?

A. The signs had on "Uneeda Slipper Company, on strike, Boot and Shoe Workers Union, American Federation of Labor." At that time we were an American Federation of Labor Union.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now, you told us that there were plain clothes men at 76 Montgomery Street?

A. Right.

Q. Is that right?

A. Correct.

Q. And by that I suppose you mean that they belonged to the police?

A. That is what I mean.

Q. And how do you know they belonged to the police?

A. The same men when we were distributing leaflets on November 29th, I saw these men participating in arresting the men that were distributing the leaflets, and myself, I was not arrested. That is why I know these men are detectives.

Q. That is, you know they are detectives because you saw them arrest somebody?

A. Right.

Q. Now you told us that these plain clothes men were hanging around 76 Montgomery Street, did you?

A. Yes.

Q. And don't you know there are two banks on that block?

A. I know.

Q. And did you ever find out whether those men were watching the banks?

A. Most of the time there is a uniformed policeman across the street, watching the bank.

Q. Yes, watching the bank.

A. That is right.

Q. You know that on that block they always have plain clothes men and men in uniform, watching the banks, don't you?

A. I don't know that.

Q. Well, you know they have plain clothes men watching the banks?

A. I don't know that.

Q. They didn't do anything to you while they were there, did they?

A. No.

Q. You didn't like to see plain clothes men and police on the streets, did you?

A. Not that I don't like to see them, but I feel they are there too much, in front of 76 Montgomery Street.

Q. You mean they should have consulted you as to the disposition of the various police officers?

A. I didn't say that.

Q. Was there anything you had to conceal that made you uneasy when the police were around?

A. No, I have nothing to conceal.

Q. Well then, why did you object to them being around?

A. Because I have contacts with workers from the open shops that I am organizing, and when these workers come around to 76 Montgomery Street to see me and they see suspicious characters downstairs, the next time——

Q. You mean the plain clothes men and the policemen, do you?

A. The plain clothes men. The next time they are afraid to come around, that they may get a report, and the next day lose their jobs.

Q. All right.

MR. HAMILL: That is all.

THE COURT: Just a minute. As he is a member of one of the party unions to this bill I am going to ask him those questions. I am going to ask——

MR. HAMILL: Now, if your Honor please, at this point I do not see the relevancy of asking a man what political party he belongs to or what is his religion; and in order that I will not be considered as consenting I want your Honor to know that I object. I didn't object to the other because it is true I said I had no objection, but after consulting with counsel at this table with me, we have come to the conclusion that it is irrelevant, and that we ought to object, and therefore I do object, as not being an issue in this case.

THE COURT: Well, just a minute. I understood, perhaps I misunderstood, if so, correct me, Mr. Hamill, from some assertions, both in the bill of complaint and

in the defense, the answer rather—there was some assertion that membership in one particular party or the like had some bearing upon the issues. If it has not, why, of course, then we will eliminate it entirely.

MR. HAMILL: I don't think it has, but I want to be squarely on the record as objecting to this testimony. Now it is true that when the first questions were answered, Mr. Frazer and I had agreed that it would be all right for your Honor to do it, but after consulting with my associates at the table we have come to the conclusion that it is irrelevant, and I wish to enter the objection.

THE COURT: Well then, if the membership in any particular party is not an issue in the case, there will be no testimony on the point. Is that correct?

MR. HAMILL: That is right, yes, that is right.

THE COURT: That may be so; then of course I won't ask the question.

MR. FRAZER: I believe it is a proper thing in the identification of the witness and I am perfectly willing to ask the question.

THE COURT: No, I don't think those personal questions should be asked, Mr. Frazer, unless they are going to be an issue in the case and Mr. Hamill says that although the pleadings might be said to tend that way, perhaps it is not going to be an issue in the case. Is that what I understand?

MR. HAMILL: It is not going to be an issue in the case? I have not yet seen the question of identification in any record, asking a man what is his religion. Ask him what is his business, where he lives.

THE COURT: Yes, I will not permit it.

MR. FRAZER: Very well, it has been withdrawn as an issue in the defense.

THE COURT: That is correct—is that correct, Congressman?

MR. HAMILL: I do not understand.

MR. FRAZER: I understand you withdraw that as an issue.

MR. HAMILL: No, we withdraw nothing. We place squarely on the record at this time our objection to the asking of questions concerning race or religion or politics, and we do it on the ground that they are irrelevant, without withdrawing one iota of any defense we may see fit to offer under our answer.

THE COURT: Well, do I understand you, Congressman Hamill, that you cannot make a defense of any of those issues?

MR. HAMILL: If we cannot make the defense, then we cannot make the defense, but I am not voluntarily withdrawing anything, as counsel suggests. We leave that to be dealt with in the judgment of your Honor.

MR. FRAZER: There are certain allegations in the bill, as your Honor has stated, which indicates that some of the defendants have made statements to the effect that certain witnesses are Communists, Reds, and other things of that kind and that the CIO, as a whole, is a Red institution. I think it is quite proper to show that the members of the CIO are not that, and if Mr. Hamill says that that is not a part of the defense——

MR. HAMILL: No, Mr. Hamill is not saying that it is not part of the defense.

THE COURT: It is a little late now and we are about to adjourn. I will decide that question in the morning one way or the other. Otherwise I shall ask questions at least bearing on the defense, or I will allow counsel to, it makes no difference.

MR. HAMILL: All right, as long a we have our objection on the record, that is all I am concerned with.

THE COURT: I am not going to ask anything now.

MR. FRAZER: May I ask this witness now—I don't want to bring him back——

THE COURT: No, I will not allow him to be asked now. It can be stipulated as to the fact.

MR. FRAZER: Will you stipulate with me as to what his answer will be on the record? I do not want to bring him back merely to ask one question.

MR. HAMILL: Well, what is the question?

MR. FRAZER: What his religious belief is and what his avowed political faith is.

MR. HAMILL: Well, it can be stated over objection —that we objected and the Court admitted it.

THE COURT: I am going to sustain your objection, Mr. Hamill, if that is not in the defense. I know Dean Frazer wants to ask the man his political or religious belief. I think it is a matter of his own conscience, so to speak, but if they are matters of defense, then we must inquire into them.

MR. HAMILL: We will stand on our objection and leave it to your Honor's judgment. We say that under any defense we have that question is irrelevant.

THE COURT: As to what their political belief is?

MR. HAMLIL: Yes, as to their political beliefs.

MR. FRAZER: I think that is a very fair statement.

MR. HAMILL: That is as to this witness, as to asking this particular witness.

THE COURT: What I am trying to avoid is, after the witnesses have all gone, I do not want to have to

then listen to a defense on the political beliefs of the witnesses who have gone, that is all.

MR. HAMILL: This man is not a party to the cause.

THE COURT: Oh yes, he is a member of the CIO union, he tells us.

MR. HAMILL: He is not a party to this cause.

THE COURT: He is a member of an organization which is a party, isn't he? If not I am wrong.

MR. HAMILL: But does that make him a party to this suit?

THE COURT: Now think this over, over night, because I am going to adjourn. I understood from the pleadings that you took the position that certain of these parties had political beliefs that you thought entitled you to take certain actions.

MR. HAMILL: There is nothing in the answer. I think the answer is merely a denial of their allegations.

THE COURT: Plus their bill it gives that impression.

MR. FRAZER: The charges of the bill are to that effect.

THE COURT: Well, you can state your position more clearly in the morning. We will adjourn now until 10:30.

(Adjourned to 10:30 A. M. Thursday, June 2, 1938.)

Thursday, June 2, 1938.

Case continued.

Appearances as before.

THE COURT: Perhaps there was a witness on the stand.

MR. FRAZER: No, I think not, sir. The cross-examination had finished.

THE COURT: Had it been completed?

MR. FRAZER: Yes, sir.

THE COURT: Then call your next witness.

MR. FRAZER: May I, before calling a witness, state to the Court that in accordance with Mr. Hamill's statement yesterday that he would be willing to abide by the statement of counsel in regard to the writ of certiorari, that I have made inquiry of counsel in that writ, who informs me that the writ was allowed, the allocatur signed, and that the writ had been served and the return made and filed; that that is the condition of the writ now, and that there has been no withdrawal of it.

MR. HAMILL: Well, I am talking about the case where there were five men who served five days.

MR. FRAZER: That is the one I am talking about, sir.

MR. HAMILL: And I said that Mr. Kapelsohn—it is too bad that he isn't here because he would know all about it—leaving it to him to make an agreement that the writ be withdrawn, and I sent him to a member of the Department, Mr. McCarthy, and I thought and still think that the writ has been withdrawn; but if you have verified it, of course I will not press that assertion in

the face of your statement after investigation; but that was my understanding of it.

MR. FRAZER: I verified it from the attorney of record in the matter, that that is the position of it.

MR. HAMILL: From Mr. Kapelsohn?

MR. FRAZER: No, sir, from Mr. Rothbard, who is the attorney of record.

MR. HAMILL: Well, it was Mr. Kapelsohn who saw me about the matter.

THE COURT: Well, do you think then——

MR. HAMILL: If we think it is important we can telephone Mr. Kapelsohn and ask him to come here.

THE COURT: Has it been argued?

MR. FRAZER: No, it has not been argued; it was only allowed at this last term of court; the writ was allowed. The argument in normal course would take place at the October term of the Supreme Court.

THE COURT: Next October?

MR. FRAZER: Yes, sir.

THE COURT: Was application made for bail in the meantime?

MR. HAMILL: If your Honor please, I am going to get in touch with Mr. Kapelsohn when I can, probably during the noon recess.

THE COURT: All right.

MR. FRAZER: There is no question as to bail in this case, your Honor, because it was a jail sentence of five days which was served——

THE COURT: Oh, it was served?

MR. FRAZER: —before the writ was allowed; yes, sir.

THE COURT: Well, I wondered if there had been application for bail.

MR. FRAZER: There had originally been but that had been denied.

THE COURT: Well, did that appear in the record? You mean it had been made to Jude Botti and he denied it?

There was an effort made immediately for a writ of certiorari to review the conviction and that in itself would have stayed the sentence, if granted.

THE COURT: I think we ought to have all those papers. I mean, ultimately.

MR. FRAZER: I would also like to ask Mr. Hamill, for the purpose of saving time, whether he would be willing to admit the following: that there are a large number of industrial plants located in Jersey City which are engaged in interstate commerce within the meaning of the Wagner National Relations Act, that is, that these plants obtain raw materials through the channels of interstate commerce or ship their finished products to other states through the channels of interstate commerce, or that they do both.

MR. HAMILL: My answer is no, I could not possibly know that as corporation counsel. If I had been given these requests before court opened and not have them sprung on me in the middle of a trial, I would be able to request other departments to make an investigation and instruct me.

MR. FRAZER: I would be very glad to give Mr. Hamill an opportunity.

THE COURT: Give him a list of the plants, too.

MR. HAMILL: How can I possibly know that as a lawyer?

THE COURT: This is just to check it up, Mr. Hamill.

MR. HAMILL: I mean, the character of the request, how can I possibly know that? If I were to ask you the same question regarding Newark—and you have lived here all your life——

MR. FRAZER: I would be perfectly willing to admit that there are a great many plants in Newark engaged in interstate commerce, and I will be perfectly willing, if the occasion arises, as corporation counsel of Newark, to admit it as a fact.

The purpose of the request is clear. The Wagner National Relations Labor Act applies throughout the United States, including Jersey City. Employees in plants engaged in interstate commerce are under the terms of the act assured the right of self-organization and the right to select an agency to represent them in collective bargaining. The act removes all doubt as to whether the CIO had a lawful, legitimate object in entering Jersey City for the purpose of conducting organizational activities.

That is the purpose for which I ask the admission to be made, to save time. Among the plants which I suggest as being so engaged are these:

Colonial Shoe Corporation
Mallinckrodt Chemical Works
Baker Paint and Varnish Company
Avon Shoe Company, Inc.
Restful Footwear Company
Mutual Chemical Co. of Ameriea
Continental Can Company
Joseph Dixon Crucible Company
LaParee Undergarment Co.
Kraft & Phoenix Cheese Corporation
Colgate Palmolive Peet Co.
A. B. See Elevator Co.
Swift & Company

MR. HAMILL: I object. Are you testifying, Mr Frazer?

MR. FRAZER: I am merely asking if you are willing to admit that these industries are located in Jersey City and that they are engaged in interstate commerce within the terms of the Wagner Act?

MR. HAMILL: I do not admit anything, and you will have to prove it. And regarding that statement, I merely want to call the attention of your Honor——

THE COURT: All right, Mr. Hamill.

MR. HAMILL: I want to be heard.

THE COURT: Certainly.

MR. HAMILL: The purpose of this request is clear: "the Wagner National Labor Relations Act applies throughout the United States, including Jersey City." I merely want to remark that the impulse to be pert, if not impertinent, applies to dignified deans as well as to ordinary individuals.

MR. FRAZER: I confess to common humanity.

THE COURT: It may even apply to judges.

MR. FRAZER: Maybe Mr. Hamill will admit that those industries which I have mentioned are situated in Jersey City.

MR. HAMILL: Mr. Hamill will admit nothing, and Mr. Hamill is not here to help you try your case. That is the second request you have made.

MR. FRAZER: I hope to make a number of requests, Mr. Hamill, to shorten the matter.

MR. HAMILL: You had a chance to do it the other day and refused to do it, and said that you would not do it.

THE COURT: Will you check up on the list of plants and see how many of them you agree do come within the decision of the Wagner Act case?

MR. HAMILL: I will do that. I will hand it to the department of the government in the city government that might be able to give me the information, and if I can get it I will produce it.

THE COURT: Give Mr. Hamill the plants.

MR. FRAZER: The list of plants, yes, sir. If Mr. Hamill will bear with me I will have some copies made of this, which is my only list.

THE COURT: Can I ask you again, can I renew my question of yesterday? I think we would all like to know whether you have as a defense, or intend to have as a defense whether any of the plaintiffs have anything to do with any particular political party? There is no use trying to conceal it, the Communist party?

MR. HAMILL: I understand your Honor wants me to consent——

THE COURT: No, I don't. I don't want you to consent to anything. I just want you to tell me something.

MR. HAMILL: Well, thank you, your Honor, because it gives me an opportunity to make a few remarks, which I very much wanted to call to your Honor's attention.

The object of this maneuver on the part of complainants is strikingly clear.

THE COURT: Well, it is a maneuver on my part, as a matter of fact, Mr. Hamill.

MR. HAMILL: No, it cannot be a maneuver on your Honor's part. At least the purpose of it is, in the estimation of complainants, beneficial to them. They want to entice, if I might say, or persuade probably is a better word, your Honor into holding that because these men belong to a particular creed or to a particular party, they therefore could not be Communists.

In other words, that they would then, so they think, break down the defense of these defendants.

THE COURT: No, that——

MR. HAMILL: This subterfuge—may I finish—this subterfuge——

THE COURT: Well, don't use names.

MR. HAMILL: —deceives no one, although it does delude them.

THE COURT: I don't mind your finishing, but don't use words so harsh like subterfuge.

MR. HAMILL: May I make just this remark? I am nearly finished now. If that were so, then every Red in the country, by the simple trick of lifting his hand and protesting allegiance to a certain creed or party, could divest himself of any culpability for belonging to the Communist Party, and we might see Mr. Harry Bridges himself walking in here and doing that very same thing.

THE COURT: Just a minute. I am not trying to limit your proof, Mr. Hamill. All I am trying to find out is whether that is a defense. If it is a defense, like any other defense it should be met by proof.

MR. HAMILL: Your Honor, I——

THE COURT: I am not speaking loud enough?

MR. HAMILL: No, your Honor.

THE COURT: I say if it is a defense, it must be proved like any other defense, and if you think that a particular witness, when he says "I am a member of the Democratic Party," let's say, or let's say my own party, for the sake of argument, that he is not telling the truth, but that he is in fact a member of the Communist Party, why, then, of course, it would

have to be gone into by way of proof. I am not trying to confine your proof; all I am trying to find out is whether that is going to be a defense, and I am not even passing—naturally, it would be improper for me to pass on whether that is a good defense. I am just trying to find out whether it is a defense.

MR. HAMILL: It is a defense because there is a law in this state which covers the situation, and I call your Honor's attention to Chapter 133 of the Laws of 1902.

THE COURT: What does that say?

MR. HAMILL: A supplement to an act entitled "An Act for the Punishment of Crimes."

THE COURT: Is that a criminal syndicalism?

MR. HAMILL: Oh, yes, it is a criminal statute.

THE COURT: But is it similar to those criminal syndicalism acts?

MR. HAMILL: Well, I am not particularly familiar with the syndicalism acts, but I have——

THE COURT: Well, it forbids Communism or——

MR. HAMILL: Yes, it forbids it.

THE COURT: It forbids overthrowing the Government by force of violence, doesn't it?

MR. HAMILL: The Government of the State.

THE COURT: Well, it is the same as the Alien Act, the Immigration Act, isn't it? Let me see the terms of it.

MR. HAMILL: Shall I read it or hand it up?

THE COURT: Just hand it up and I will read it into the record.

(Handed to the Court.)

Well, may I read it, because I am familiar with it:

"Any person who shall, in public or private, by speech, writing, printing or by any other mode or means advocate the subversion or destruction by force of any and all government, or attempt by speech, writing, printing or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to any and all government, shall be guilty of a high misdemeanor . . ."

That language is practically the same as Section 137 of the United States Code Annotated, which prescribes the refusal to admit aliens who write, publish, or cause to be written or published, or who knowingly advocate or circulate, distribute, print or display, or knowingly cause to be circulated, distributed, printed, etc., any written or printed matter advising, advocating, or teaching opposition to all organized government.

It is the same wording practically.

Now, you say that is a defense, is that correct?

MR. HAMILL: I say that that will probably be a defense. We shall urge all defenses that we may legally urge.

THE COURT: Well, then, if that is a defense it seems to me that the questions that I asked the witnesses were relevant.

MR. HAMILL: That the questions what?

THE COURT: That I asked those witnesses, were relevant. You didn't feel like asking them on cross-examination. Now, you want me——

MR. HAMILL: Well, the Court, of course, I am reciting something very unnecessary by saying the Court has the right to ask any questions it wants. I have heard it said that you could object to a Court's question, but I never knew any lawyer who did it.

THE COURT: I have had it done.

MR. HAMILL: But we think that it is not relevant. Now, if the Court thinks it is relevant, of course the Court is directing the trial, but as I understood, someone wanted us to consent. We are not trying this case by consent; we are trying it under the direction of your Honor.

THE COURT: Well, I was only asking the question, Mr. Hamill, because otherwise, of course, you will have to recall all these persons and prove either through their mouths or in some other way that they have at some time violated this statute you just cited to me.

MR. HAMILL: Well, whatever we have to do we will do. We are ready to do it, or take the consequences of not doing it.

THE COURT: Well, it would seem a waste of time, but if that is the way you want to do it, all right. Go ahead.

MR. FRAZER: Mr. Sweeney.

JAMES P. SWEENEY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. HAMILL: May I have Mr. Sweeney's address?

THE WITNESS: 453 Mt. Prospect Avenue, Newark, New Jersey.

MR. FRAZER: Mr. Sweeney is a little deaf and I may have to speak somewhat loud.

THE COURT: All right.

Q. Mr. Sweeney, you are one of the plaintiffs in this action?

A. That's right.

Q. What is your business?

A. CIO organizer, Committee for Industrial Organization.

Q. And are you connected with any union?

A. Yes, sir.

Q. What?

A. The United Mine Workers of America, District No. 7, the anthracite region of Pennsylvania.

Q. You are now connected with the New Jersey office of the Committee of Industrial Organization?

A. That's correct.

Q. And how long have you been so connected?

A. From November 16, 1937.

Q. Were you engaged at all in organizing activities on the 29th of November, 1937?

A. Yes.

Q. Had you been engaged before that time?

A. Yes, sir.

Q. In this section?

A. At Buffalo, New York, and back in Pennsylvania.

Q. Well, when you came to Newark had you done any work in organizing prior to November 29?

A. Oh, yes. I was assigned to the CIO on the 22d of July, 1937, but previous to that in Crowl, Pennsylvania, District No. 7, of the United Mine Workers, Local 1537. I was president of the local, treasurer, vice-president, chairman of the mine committee, or grievance committee they call them, shop stewards around here, for sixteen years off and on.

Q. Now, coming down to November 29, 1937, will you state what occurred within your knowledge on that day.

A. Yes, I will. I arrived at Jersey City shortly after 6 A. M. on the morning of December 29, 1937, in company with Mr. Traynor and Mr. Holley. Mr. Traynor is a CIO field representative like myself; Mr. Holley is connected with the T. W. O. C., commonly known as Twoc, the Textile Workers Organizing Committee. The night before—I am getting ahead of my story. I met Mr. Macri, who was as-

sistant regional director to Brother William J. Carney, in the Hotel Douglas. At that time I didn't have my family here yet. We were both staying at the Hotel Douglas. And Macri said to me, "Mr. Sweeney, have you anything on for tomorrow?"

MR. HAMILL: No, I object.

THE COURT: Explain to him about the hearsay rule, will you, Dean?

A. (Continuing.) I said, "No." He said, "Well, how about going to Jersey City?"

MR. HAMILL: I object, I object.

THE WITNESS: Is the objection sustained, Judge?

THE COURT: Don't say what other people said to you.

MR. FRAZER: I think the Court should perhaps limit that instruction. If we are dealing with matters of res gestæ——

THE COURT: Yes.

MR. FRAZER: —I think that those may be said, and also where we are proving verbal facts, which it may become necessary to prove.

THE COURT: Yes.

MR. HAMILL: Well, it certainly is not part of the res gestæ——

THE COURT: No.

MR. HAMILL: The res gestæ is an act which is necessarily connected with another principal act, and which is uttered, the statement is uttered, under the influence of the principal act. It cannot be a mere recital of past events, and that's what this is.

MR. FRAZER: Now, I might say that the instructions of Mr. Macri in his capacity of regional director, assistant regional director, may be relevant as showing the mental condition of this witness. He is acting

under instructions, and it is only proper to let us know what those instructions were, as interpretive of his general action, and in that sense they do become part of the res gestæ.

Mr. Hamill: If he has done something wrong, the mere fact that somebody advised him, some organization, before he acted, that does not at all excuse him. He is not here to give us his mental condition; he is here to tell us what he did and what someone else did to him. He is a fact witness.

Mr. Frazer: Of course, the assumption, that he has done something wrong is purely gratuitous, but it may be that some of his statements or his actions were changed, in the light of the mental suggestion which had been given him. It might have a very grave relationship to the action.

Mr. Hamill: What someone else told him would be hearsay evidence, and if he is permitted to relate what someone else told him, why then this case is going to be tried by hearsay evidence and not by direct evidence. He is put on as a fact witness, to tell what he did.

The Court: Go ahead. Tell them what happened.

A. We went down to 76 Montgomery Street and we arrived in the hall on the third floor.

Q. All right.

A. The shoe workers organization, and there were about forty or fifty people, possibly, from different international unions and some lawyer connected with the Civil Liberties League and other organization sympathizers, and after some discussion we went out by twos, down toward the Harborside Building.

Q. What was the instructions which you received?

Mr. Hamill: I object.

The Court: I don't understand your point on that, Mr. Frazer. Is this one of the witnesses who distributed handbills?

MR. FRAZER: Yes.

THE COURT: I don't see why we should waste much time arguing on the technicalities of it.

MR. FRAZER: I want to give a complete picture as to what was urged.

THE COURT: He was told to distribute handbills, we all know that.

MR. FRAZER: Yes, but one of the defenses is that these people came in with the purpose of disorderly conduct and so on. It becomes very relevant as to what the instructions were as to the character of their activities.

MR. HAMILL: Then is he going to prove that he didn't commit disorderly conduct by telling what somebody else told him to do?

THE COURT: I have not yet understood that you can test this ordinance which is on the bill of complaint except in the manner it was tested. It seems it provides for no permit whatever. In fact I would say, in my legal opinion it does not apply to this situation. That is only my legal opinion.

MR. HAMILL: Then what is the purpose of the testimony of the witness?

THE COURT: Your complaint yesterday seemed to me, at least, that these people went there for the purpose of in some way violating the ordinance.

MR. HAMILL: And we will show by facts that that is what they did. We do not care who told them. We are not interested in whether somebody in an organization gave them instructions. That does not relieve them.

THE COURT: I think it would be conceded that they went there for the purpose of testing it. Now, if there were some more orderly way of testing it——

MR. HAMILL: All right, I will take your Honor's suggestion. If it be admitted that they went there to test this ordinance I will let in that hearsay evidence that they went there to tes this ordinance.

MR. FRAZER: They went there to establish the right to distribute——

MR. HAMILL: I know. Now, yes or no to my admission.

MR. FRAZER: Oh, no, no. I would not say yes or no to your questions, Mr. Hamill.

Q. Well, go on and state what happened, Mr. Sweeney, will you?

A. Well, the flying wedge of plain clothes men and uniformed men forced us in doorways, in hallways and any place they could.

Q. How many of them were in that flying wedge, as you call it?

A. You mean plain clothes men and policemen?

Q. Yes.

A. A much larger party than we had. I would say seventy-five to one hundred, and one of them hit me a sock on the short ribs and of course he took the literature off me.

Q. What did he do when he took the literature off you?

A. Snatched it right out of my hand and scratched my index finger on my left hand.

Q. Before he did that he struck you?

A. Yes, in the short ribs.

Q. And what did he do with the literature?

A. He stuck it in his pocket and herded me toward the ferry boat and I stepped on the ferry boat and got off on the other side and got a ride on a bus and since I would not pay my fare I was put off because I didn't want to go where they were sending me. I came back, in just a short time, two or three minutes, really got off and came right back.

In the meantime it showed me, it was obvious, the fact that these people didn't know——

MR. HAMILL: I object——

THE WITNESS: —and there were so many of them——

MR. HAMILL: I object. Let us know what he saw. We don't want his opinion, whether it was obvious or apparent or anything else.

A. One of these plain clothes men, who had two of our boys and the literature, he said, "Here, take one of them, take the literature off him." He took the boy. He said, "I am a CIO organizer, keep the literature." But then I was picked up and Brother Barry and I were taken and put under the charge of one plain clothes man and the man apparently in charge came up——

MR. HAMILL: I object to his opinion, what he apparently did. What did he do?

A. —came up and said——

MR. HAMILL: What did he do, to his visibility?

MR. FRAZER: Strike out the "apparently." Go ahead, a man in plain clothes——?

A. Came up and said to the man with us: "Which one did you get first?" and he pointed to Barry and he said, "Take him in. Let him go." Then we went back to the hall and had a fifteen or twenty minute discussion and we came out again and this second time I had no literature——

Q. Just before you go back there, as I understand you said when you first came there there was a flying wedge organized?

A. Yes.

Q. And you were pushed into a hallway and so on?

A. Yes.

Q. Did you say anything about a ferry boat?

A. Yes.

Q. What was that? I didn't get it.

A. I was put on a ferry boat but I walked off on the other side, not desiring to go to New York.

Q. Now you said then you went back to "76"?

A. Yes.

Q. Tell us what happened there.

A. Well, we discovered that four or five men, at least, were picked up, they were apparently——

MR. HAMILL: I object, that is evidently hearsay.

MR. FRAZER: His observation.

MR. HAMILL: Did you see them?

THE WITNESS: I said that they were not present, so there was nothing else left except that they were picked up.

MR. HAMILL: Then I object. That is evidently his conclusion. They were not there and he concludes that they were arrested.

THE COURT: I will strike it.

Q. They were not there in any event?

A. Well, we came back downstairs. I didn't have any literature and as we went into the revolving doors which was closed, closed by plain clothes policemen and some other people.

Someone suggested that we would have to go down the fire escape. I said "No, let's stay here until they let us out," and we decided on that course. And probably within five or ten minutes they began to let one at a time through the revolving doors, frisked us, searched us from head to foot, and put us in the private cars.

I was in one of these private cars along with two other fellows and two plain clothes men in front, and they were bringing us out in the sticks, somewhere——

Q. Who were the other fellows, do you remember?

A. Cronin and Silverman, Silverman from the United Shoe Workers, and Cronin I think was a worker there, I

am not sure of that. There were three cars. They stopped out there in front of us, with a like number of men from our volunteer ranks of organizers. We were all taken out of our cars and assembled there.

Then these people in plain clothes, the eight of them, went up front and had a conference at the first car and we stood there lighting a cigarette or a cigar, and then they came back and they ordered us in the cars. Number one car then—the first in line—starts off and it goes out of sight. Then in a minute number two car starts up and it goes out of sight. Another lapse of about the same interval and number three starts and goes out of sight.

We were sitting there and I said to the officer: "When do we start?" He said, "Get out," so they left us there. That was the idea, to separate us.

MR. HAMILL: I object "that was the idea."

MR. FRAZER: That was the effect, at least?

A. Yes, and us three, walked back up toward where we could get a bus or a car or something, and while we were there we were joined by three other fellows, Milt Irons, he was one of the fellows I knew out of the other three, and we walked along to where they said they could get a bus, me not being familiar with that part of the country, and we heard this horn blown at the intersection. We turned around and there was a police car with two uniformed men in it, a radio car, and we glanced over our shoulders and we kept slowly walking in the same direction we were going, and we see them stop a man who apparently had his lunch under his arm, a man not connected with our organization in any way. None of them seemed to know him, and they had him open his lunch and they left him go in time——

MR. HAMILL: I object. He didn't see what was in there.

A. When it opened, then I did see it. I seen an apple and a sandwich drop out.

MR. HAMILL: All right. You are doing a little better as you go on.

A. I will make it very explicit for you in the future. So these two fellows pulled up beside us and they stepped out and one fellow went over to the other four or five and he left me standing there for a while, without frisking me. And I said, "Officer, what are you detaining us for?" He said, "Suspicious characters." He said, "I didn't frisk you." He frisked me and we stood there a little more and while we were standing there a funny incident occurred. A young kid about eighteen came along the street and seen the police car and four or five men——

MR. HAMILL: I object to that, irrelevant.

MR. FRAZER: It is part of the picture.

MR. HAMILL: It certainly is not very probative.

THE COURT: Has it anything to do with the organization?

MR. HAMILL: We don't want amusing incidents.

A. It was a little humor in a tense situation, since we didn't know what might occur, Judge.

MR. HAMILL: This gentleman is evidently a romancer and all we want is——

A. I like flowers and beautiful women and things like that. If you call that being a romancer, I am.

MR. HAMILL: And I would like to have him stick——

THE WITNESS: Somebody might as well have a little color in here as well as you.

MR. HAMILL: And you want to get part of the show, you want to testify?

THE WITNESS: I don't want no show, I want to tell the facts.

THE COURT: Let me supply the humor, please.

MR. FRAZER: This is a picture of police activities, and even though parts of it be humorous, there is no reason why it should not be told in order to have the complete picture.

MR. HAMILL: Then let him tell it.

MR. FRAZER: If Mr. Hamill does not interrupt, he can tell it very briefly.

THE WITNESS: Well, you see, the eighteen-year-old stuck his head in——

MR. HAMILL: I object to what the eighteen-year-old boy stuck his head in and did. I know——

Q. What did the eighteen-year-old boy do?

A. Well, he didn't do anything except stick his head in there and one of the cops said, "What do you want?"

MR. HAMILL: I object.

A. —"I want a job, can you give it to me?"

MR. HAMILL: I object to this hearsay evidence.

THE COURT: Strike it out.

Q. Go on, what happened after that?

A. Then I went back to Jersey City, to the shoe workers headquarters and there was nothing doing then and——

Q. Did these officers do anything to you further than what you said?

A. No, they just ordered us to go back out of Jersey City.

Q. How did you get back?

A. Well, I went back. Milt Irons said his car was there right off 76 Montgomery Street on a side street, going east, I think, and he had some material there and I had a hat there——

Q. I mean from the time you were outside Jersey City and you were coming back. How did you get back to 76 Montgomery Street?

A. On a bus. Then we paid our fare there. We were not forced on that, and as I say I had a hat there and he had his brief case or something, and we went down to his car and came back to Newark.

Q. Now, did you attend a meeting of the so-called veterans in the Jersey City Armory on December 28th?

A. That is correct.

Q. Are you yourself a veteran?

A. Yes, I am a member of the American Legion, Post 170, Gewshi-Shubeck. That name is taken from two fellows who were killed in France.

MR. HAMILL: I object "two fellows who were killed in France." That is no part of the case.

MR. FRAZER: Strike it out. I have no objection.

MR. HAMILL: There were a number of such good men met an unfortunate fate, but it is not relevant to this testimony.

A. I just said the reason the post was named after them.

MR. FRAZER: Are you finished your remarks, Mr. Hamill?

MR. HAMILL: Yes.

Q. Now, Mr. Sweeney, will you tell us the circumstances of the so-called veterans' meeting in Jersey City on December 28th, so far as you observed?

A. At this so-called veterans' meeting, which was held in a basement, I think——

MR. HAMILL: I move to strike it out, what happened at the "so-called veterans' meeting." We are not asking him for a characterization. His prejudice is obvious.

THE COURT: Strike it.

MR. FRAZER: It was "so-called."

MR. HAMILL: There was a veterans' meeting. It was not a "so-called veterans' meeting."

MR. FRAZER: We do not concede it was a veterans' meeting. There were some veterans there.

MR. HAMILL: Then get your question. Have it read. It was "did you attend a veterans' meeting." It was you who said it.

Q. Did you attend a veterans' meeting——

MR. HAMILL: Let the stenographer read the question. You said: "Did you attend a veterans' meeting."

MR. FRAZER: Well, I think we have identified the meeting sufficiently.

Q. Tell us what you saw at that particular meeting.

A. Well, before going into the meeting I had taken my American Legion pin off——

MR HAMILL: I object. He was asked what happened at the meeting.

A. Well I walked in without being asked for my identification or my legion button or to show my paid-up legion card. I was handed a white silk ribbon which I think Mr. Ernst has, which was about five by four inches, with black letters "Jersey City War Veterans." I sat in the second seat off to the left of the speakers, Hugh Kelly, Mr. Rooney and several others and the only man I knew was a man I frequently met at conventions, McKenna, who was the national committeeman. I asked him when did he see James Carroll——

MR. HAMILL: I object to what he asked him.

A. But anyhow I observed the meeting and they had two girls and a fellow who were entertaining, so far as I understood they came from Roxy's Theatre.

MR. HAMILL: I object—"as far as he understands."

Q. Were they announced as coming from Roxy's Theatre?

A. They came from Roxy's Theatre——

MR. HAMILL: If we can restrain the enthusiasm of this witness possibly we can get some of the testimony on the record.

THE COURT: Go ahead.

A. They were introduced as actors and actresses from the Roxy Theatre.

MR. HAMILL: I object.

THE COURT: I don't see what that has to do with it.

MR. FRAZER: I am trying to get the picture of the so-called veterans' meeting.

A. After the meeting was concluded, approximately two hours, I left the meeting and when I finally got clear of the crowd——

Q. What happened at the meeting itself?

A. Well, they passed different resolutions.

Q. Will you tell us how they were passed?

A. With lots of enthusiasm, the Irish war veterans said they——

MR. HAMILL: I object.

A. —that they would go to any means to keep these Reds out——

MR. HAMILL: I object and ask your Honor to instruct the witness to answer the questions without rambling all over with his ruminations and reflections and cogitations and comments on everything that happened.

MR. FRAZER: Mr. Sweeney is not a skilled litterateur like Mr. Hamill. He is telling in his own simple way what happened. He may ramble at different times.

MR. HAMILL: Well, we know of his discoursiveness, which is against the rules of evidence. If he would an-

swer the simple question this case could be tried far more expeditiously.

THE WITNESS: I have not been prompted, and thanks to you you have not told me that I am an intelligent witness, like you told other previous witnesses.

MR. HAMILL: I move to strike that out and ask that the Court instruct the witness to behave himself on the stand.

Q. Now, will you please tell us, Mr. Sweeney, what was said, so far as you recall it, when resolutions were presented at the meeting, and how they were presented?

A. Mr. Kelly——

MR. HAMILL: I object on the ground it is irrelevant. What difference does it make whether they were presented on way or another. He can tell what happened.

THE COURT: Yes, tell what happened.

A. Well, the resolutions were presented and they went over unanimously. The organization was the same as that at Johnstown, Pennsylvania——

MR. HAMILL: I object. We don't want the embellishment.

A. Then I left the meeting and when I got clear of the crowd——

Q. One moment. Were those resolutions prepared in advance? Did they come——

MR. HAMILL: Now, I object to that.

A. Prepared in advance.

MR. HERSHENSTEIN: Just a minute——

MR. HAMILL: I object. If there is any more flagrant example of a leading question than that, I would like to know it. Counsel is not eliciting information from the witness. He is giving information to the witness.

THE COURT: Have you got the resolutions?

MR. FRAZER: Yes, sir, I think so.

THE COURT: Are they attached to the bill?

MR. FRAZER: Attached to the denial of the application for a permit to speak, to hold an open-air meeting.

MR. HAMILL: That is very different from asking the witness, who evidently knows nothing about it.

Q. I show you copy of a resolution which is attached to the bill of complaint, and ask you to examine that, Mr. Sweeney, and tell me whether that was the resolution which was offered at that meeting? (Handing paper to witness.)

MR. HAMILL: Now, before he does that may I inquire on the resolution?

A. Incidentally——

MR. HAMILL: Give me the paper.

THE WITNESS: No, he gave it to me.

(Mr. Hamill takes paper.)

MR. HAMILL: Your Honor, I ask you to instruct this man to behave himself.

THE COURT: Give Mr. Hamill the paper.

THE WITNESS: It was presented to me, Judge.

MR. HAMILL: He imagines he can be a bit fresh on the witness stand. We are trying this case like gentlemen——

THE WITNESS: I was handed something by my attorney. My attorney gave it to me.

THE COURT: Examine on the resolution, Mr. Hamill.

By MR. HAMILL:

Q. When did you first see this resolution?

A. I didn't see the resolution——

MR. FRAZER: I asked him to identify it, that is all.

THE WITNESS: They had three photostatic copies of the——

MR. HAMILL: Will you subside for a minute——

THE COURT: I don't think he hears half you say, Mr. Hamill.

MR. HAMILL: I see. We will get in an acre lot then so that we can interrogate him.

First I object on the ground that this testimony is irrelevant. What difference does it make what the veterans did or what anybody else did? How does that affect these defendants?

THE COURT: It does not seem to me, Dean Frazer, that that is a matter that has to do with the granting of permits. I didn't understand that the action of these veterans would be in the defense——

MR. FRAZER: No, sir, we are charging that there were permits for open meetings denied us. The denial was based upon allegations of actions at veterans' meetings, actions which indicated to the public authorities——

THE COURT: Well, isn't that a matter of defense?

MR. FRAZER: No, I think not. I think it is a matter of proof of our denial of substantive rights.

THE COURT: Unless they have reason for denying the permit; then, of course, you shouldn't have it. Now, as I understand it, their reason is that the veterans passed these resolutions——

MR. FRAZER: Yes, sir.

THE COURT: —or at least one reason. That's correct? Therefore it seems to me a matter of rebuttal to their defense. If you think that the veterans' resolu-

tions were stimulated by other sources, that would be a matter of rebuttal to the defense.

MR. FRAZER: I think not; inasmuch as the very denial which we are complaining about was accompanied with statements of what occurred at veterans' meetings. We expect as a part of our case to prove that these veterans' meetings were fomented, that they were not spontaneous.

THE COURT: That may be so. But I think it is a matter of rebuttal. I will rule against it at this time.

MR. FRAZER: May I have an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

By MR. FRAZER:

Q. Now, as you left the hall did anything happen to you?

A. Yes, when I got about 15 feet away from the crowd that were standing and greeting one another, and lighting up cigarettes and cigars, two men came alongside of me, one on each side, right and left, and said——

MR. HAMILL: I object to what they said.

A. (Continuing.) ——"Don't start anything. We are taking you"——

MR. HAMILL: I ask your Honor to instruct——

THE COURT: He doesn't hear you, Mr. Hamill, I don't think.

MR. FRAZER: These are policemen he is testifying about now, what happened to him——

MR. HAMILL: How do we know whether they are or not.

THE WITNESS: They afterward identified themselves as such.

MR. FRAZER: He has just said so.

A. (Continuing.) These two gentlemen identified themselves to my satisfaction, and I went to the police station across Montgomery Street in the first block off Bergen on the left-hand side. There were several men in there. One of these fellows who was in the police car out at Harrison on Noevmber 29th was there, and he told the man who was sitting behind the desk——

MR. HAMILL: I object to that.

MR. FRAZER: This is part——

THE COURT: I don't know how much he hears, Dean Frazer, but tell him not to testify to what other people say. I am not going to permit it.

MR. FRAZER: This was in the police station.

THE COURT: What?

MR. FRAZER: The police are directly charged with complicity in the whole affair. This was in the police station, where, without charge, he was taken, and I wish now——

THE COURT: We don't even know that. He hasn't told us what he was doing in the police station.

MR. FRAZER: I understood him to say, sir, that he was taken by two men, one on either side, as he was a few away from the entrance, and that they took him to the Montgomery Street police station—was it?

THE WITNESS: I said they identified themselves to my satisfaction as policemen.

MR. HAMILL: Well, if you say it, Dean Frazer, all right then. Let that be his testimony. That is the easiest way out of it.

THE WITNESS: I did, sir. Didn't you get that?

MR. HAMILL: Now we have him in the police station.

MR. FRAZER: He is now in the police station, having been arrested by two persons who identified themselves as policemen.

MR. HAMILL: All right. Now, is there anything else?

MR. FRAZER: Yes. Then in addition he stated just now that when he was there he recognized one of the men who had been in the police car which had taken him to Harrison on November 29, he said, at five o'clock.

MR. HAMILL: All right. Let that go in as his testimony. That is his testimony.

MR. FRAZER: Now, he is about to say what happened to him with the police in the police station.

MR. HAMILL: Now, would you like to testify to that?

MR. FRAZER: No. No, I haven't heard that yet.

THE WITNESS: He ain't putting words in my mouth.

MR. HAMILL: I want to be complaisant to the fullest limits.

MR. FRAZER: I am waiting now to hear what he has to say.

A. The fellow back of the desk said, "What's the charge?" He said, "Well, he was disturbing a meeting by giving the Bronx cheer"; and he said——

MR. HAMILL: If your Honor please, may I make another remark? Suppose this meeting were engineered, fomented, or whatever the Dean called it——

MR. FRAZER: "Fomented" was my word.

MR. HAMILL: —and worse; suppose all of those things happened. How would that have any effect on these defendants unless you would show that they fomented it? Are they going to show that?

THE COURT: Well, I think, Dean Frazer, this is rebuttal to some defense that you think they may make. I think it is out of order. It is a matter of proof.

MR. FRAZER: Well, it seems to me, your Honor——

THE COURT: Maybe that defense won't be made, I don't know.

MR. FRAZER: If we wish to anticipate rebuttal, it may be very foolish on our part——

THE COURT: I don't think it is proper because that defense may never be made. I don't know.

MR. HAMILL: Here is what I wanted to say to your Honor. Say I am Director of Public Safety of Newark and an application is made for a permit, and they tell me that a lot of meetings have been gotten up, or rather a lot of meetings have been held, and these resolutions passed, and I say in my judgment this meeting, taking those meetings as an indication of the temper of the people, would lead to riot and disorder, and in the interest of public safety and public peace, I shall deny it. Now,——

THE COURT: Yes, but supposing you arranged the meetings, to put an extreme case; you can hardly——

MR. HAMILL: Then, of course, it would be false; it would be false; and it would be proof that I did not use my discretion honestly.

THE COURT: Yes. Well, I think this is rebuttal to a defense that has not yet been made.

MR. FRAZER: May I respectfully submit to your Honor that everything which I am now trying to prove is part of the allegations of the bill of complaint. We are proving merely the facts which we have alleged, and which I take it is the orderly way to proceed in a suit in equity, to show everything that we know about the case, and then allow them to come in with their answer and defense, and if there be any matters which have not been opened, then we have a right to go on in rebuttal, but there is not a single question which I have addressed to this witness which is not relevant to some charge in the bill, and these very resolutions under discussion are attached to the bill as a part of our direct alleged case.

THE COURT: I thought you alleged some of their defenses in their bill for the purpose of rebutting them. I didn't think that was proper pleading at the time.

I will deal with the veterans' question if it is offered as a defense, not before.

By MR. FRAZER:

Q. Well, now, will you state what happened to you, what the conversation at the police court was when you were arrested?

A. Well, he went on to tell——

Q. Or the police station, I mean.

A. —to tell this man behind the desk whom I didn't know that I disturbed the meeting and gave them the Bronx cheer, and I took notes of the meeting, which I did. I have notes from every outside State meeting I attended, or convention, at my home. And he said general disorderly conduct, and the Judge asked me was I Legionnaire. I said yes, and I showed him my card, and that satisfied him. This officer went to take the notes out of my pocket, and I handed them over to the Judge, who gave them the once over and handed them back and said, "There is nothing in them to incriminate us in any way," and he said, "The case

is dismissed." Then I was left go, and these same plain clothes men followed me on my walk up to Journal Square, until I got in the tubes.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR HAMILL:

Q. So that you were brought to the police station and when the Judge heard the case and heard the circumstances, he dismissed you?

A. That's correct.

Q. All right. And you went to the veterans' meeting and the sum total of the knowledge you obtained there was that the veterans unanimously passed resolutions; is that right?

A. A rabble-raising, yes.

Q. Sir?

A. A rabble-raising. They passed them under pressure.

Q. They passed them under what?

A. It was fomented by these leaders.

Q. I see. How do you know that?

A. Well, I could see. I know how they incite a mob and how they incite people at conventions to pass resolutions.

Q. Well, you never incited a mob or a convention to pass resolutions, did you?

A. No, I never incited a mob or convention to pass anything?

Q. Did you ever incite a mob?

A. No, but I have seen other people do it.

Q. Well, were those people who incited mobs friends of yours?

A. No.

Q. They were all enemies? You never incited a mob in retaliation, did you?

A. No, because I was always in the minority, and I wouldn't do it anyway, whether I was in the majority or the minority. I believe in democratic rule.

Q. Yes. And you judged that they were fomented from the fact that you had experience in what you thought similar situations, is that right?

A. Yes.

Q. You didn't take any part in fomenting it, did you?

A. No.

Q. No. You went there to act as an observer of what was going on?

A. I am interested in veterans' legislation, and I thought perhaps there might be something of benefit to the veteran and the widow and the orphan that might transpire there, and I was amazed at what did transpire.

Q. Well, did you suggest anything at the meeting for the benefit of the widow and orphan?

A. Why, I would have been completely out of order. It was not called for that purpose.

Q. Well, did you try? Did you make the motion?

A. No. I would be declared out of order, because it was a special meeting called to deny this permit to Roger Baldwin.

Q. Well, now, do you think an eloquent and fluent man like you could not rise up and suggest something for the widow and the orphan of the veteran, if you went there for that purpose?

A. Well, if I had any education at all, like you give me credit for, thanks for that, I wouldn't get up and talk in a special meeting that wasn't called for that purpose. I would be out of order. I know that much about parliamentary procedure.

Q. It was called for a special purpose, wasn't it?

A. Yes.

Q. Then what made you think, what made you believe, when you went there, that you might find something for the benefit of the widow and the orphan?

A. I didn't know when I went in there what might transpire until after I got in and seen the thing going the way it went and heard it.

Q. And where did you come from to go to that meeting?

A. From Newark.

Q. Who told you to go to the meeting?

A. I happened to be in New York that day on a Labor Board case, and when I was going into Cortlandt Street station I picked up one of the Jersey papers and seen the meeting advertised.

Q. And that's what brought you there?

A. Yes; a news item in the paper, not an advertisement.

Q. Do you go to all veterans' meetings?

A. Usually, if I have time, yes.

Q. And you didn't go for any other purpose except to see if something was done for the widow and the orphan?

A. Oh, to see if something of benefit to the veteran in general.

Q. Yes.

A. And the comradeship that you get among veterans, that you usually get, that ain't true in the other fraternal organizations.

Q. Now, when did you first come to Jersey City? I think you said November 16, didn't you, 1937?

A. Yes.

Q. And what is your position now?

A. CIO field representative.

Q. A CIO field representative?

A. Correct.

Q. And who sent you here to Jersey City?

A. Walter Smithers, the assistant executive to the assistant chairman to John L. Lewis.

Q. And were you sent for any particular purpose?

A. May I tell you why I was sent?

Q. Yes, go ahead.

A. The regional director and I had there a dispute about me going back home to Pennsylvania to do some electioneering in the campaign last fall.

Q. I wish you would make it short, because I don't want you to take advantage of the permission I gave you.

A. All right, that's all. That is what I tell you; and I went home without his permission, and of course, naturally, him and I had an argument, and for the betterment of the organization they transferred me down to New Jersey.

Q. All right, Mr. Sweeney, that's all. You are still connected with the CIO?

A. Yes, sir.

MR. HAMILL: All right.

MR. FRAZER: Miss Cox.

NANCY COX, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Miss Cox,——

MR. HAMILL: Now, may I get the young lady's name, Dean? If you have it give it to me, please.

MR. FRAZER: Nancy Cox.

MR. HAMILL: And what address, please?

Q. What is your address?

THE WITNESS: If your Honor please, I would like to be excused from giving my address at the present time. I am afraid of having it made known public because of recent happenings.

MR. HAMILL: I can't hear you, Miss Cox. Do you mind speaking a little louder, please?

THE WITNESS: I was asking if I might be excused from answering that publicly. I am afraid to have the address made known public because of recent happenings.

MR. HAMILL: Well, all right, if you don't care to give it on the witness stand I shall not insist on it.

THE WITNESS: I will gladly give it to you privately.

MR. HAMILL: You can give it afterwards to the——

THE COURT: Stenographer.

MR. HAMILL: —court stenographer.

THE WITNESS: I will.

MR. HAMILL: All right.

Q. On November 29, 1937, were you associated with any particular organization?

A. I was at that time associated with the New Jersey Civil Liberties Union as executive secretary.

Q. By way of identification, Miss Cox, you are the Nancy Cox who was the prosecctor of the certiorari in an ordinance distribution case which occurred in the Borough of Edgewater, I think?

A. I was.

THE COURT: Are you a graduate of any college, Miss Cox?

THE WITNESS: I am a graduate of New York University.

Q. Now, as a member of the Civil Liberties Union did you do anything on the 29th of November, 1937?

A. Yes.

Q. And will you briefly state what that was?

A. I acted as an observer in the attempted leaflet distribution in Jersey City by the CIO organizers.

Q. Will you state what you did and what you saw on that occasion?

A. I will. I went over very early in the morning, about between six and six-thirty, to the office at 76 Montgomery Street where the organizers were meeting. There I saw the circulars which they were going to hand out, calling

for a meeting, and I saw several organizers prepared to go out to hand out the leaflets. After they received their instructions to leave the office and go downstairs and go to what is called the Harborside Building, I followed after but kept some distance away from the distributors so as not to be confused with them.

Q. Did you have any circulars yourself?

A. I did not. I was acting merely as an observer. I followed them along, I followed alongside of them as they went down the street, quietly, and noticed that as soon as we had left the door, several men in plain clothes, joined us. There were great numbers of police around, uniformed police, and radio cars on every corner. We went down together toward the Harborside Building, and as soon as we got near there, there was a large group of plain clothes men together with some officers who rushed into the CIO organizers, who were going to try to hand out leaflets to the workers coming to the Harborside Building. These men as they rushed into the group of CIO organizers knocked the men off their balance, took leaflets from their hands, and pushed anyone who was nearby, in order to crowd these men all together. The men themselves were helpless. Some were shoved off to the ferry, numbers were pushed on to the bus, and others were just crowded together so that they couldn't move. I, myself, was pushed up into a doorway where I stepped further away to stay out of any trouble. I later went out into the street when I saw that some of the organizers had been taken away and was talking with two other observers about what we had seen. At that moment, without any provocation, a man in a polo coat, one of the ones whom I had recognized before as being with the group of plain clothes men, grabbed the leaflets out of the hand of a man who had just picked one up from the ground to put it into his pocket, and punched my other companion, Robert Parker, in the abdomen. We were quite shaken by this and after we had seen that several of the organizers had been taken away, we decided

to go back to the meeting hall to make up our mind as to what the further plans of the group would be. Back there it was noticed that the leaders of the CIO organizers were missing. I had seen several of these held by plain clothes men and some put aboard the bus. During the meeting in the room upstairs plans were made to go out of the building and try to find what happened to these men who had disappeared. We went downstairs and found out that the rotating door, revolving door, was being guarded outside by plain clothes men and by officers. We couldn't get out. We tried to get out the back door. We thought of going out the fire escape, but there were several policemen back there and we thought that we might be stopped for entering a building instead of exiting from one, and decided to wait until whatever happened did happen. Finally the door was moved and we were let out one by one. As we went out we were searched. The majority of the persons going out of the door were put into cars waiting for the purpose of receiving them as they came out. For some reason or other I was not put into a car, as were two or three other persons there. We decided to go up to the police station to find if we could discover the whereabouts of the persons who had been picked up at the Harborside Building. Upon going up there I was refused admittance to the station. I identified myself as an official of the Civil Liberties Union, said that I had heard——

MR. HAMILL: Of what union, may I ask?

THE WITNESS: The Civil Liberties, the New Jersey Civil Liberties Union; that is not a union organization, a workers organization.

A. (Continuing.) I told them that I understood that several——

MR. HAMILL: Now, please, Miss Cox. You can't tell us——

MR. FRAZER: This is to the police.

THE WITNESS: This is what I told the policeman at the door of the police station.

MR. HAMILL: All right, go ahead.

A. (Continuing.) I told him that I had seen that several persons distributing literature had been taken away from the scene, and that I understood they were to be taken to this station on Montgomery Street. He said that no persons had been there this morning, that nothing had happened to his knowledge, and also that nobody was to be allowed admittance to the police station. I stayed around realizing that it was important to find out what had happened to these persons. Some time later Chief of Police Walsh came downstairs. I told him who I was and he said, "Oh, we will let anyone in from the Civil Liberties Union. We have no fear of them." I walked in, found out that they had no one booked for any charge for anything that had happened that morning. They claimed that they had none of our people there. Just then I stepped into the hall and two observers who had been on the scene of the distribution were being pushed out of the police station by two officers. I asked them where they were going and thy said they had no idea. After waiting around some time, Mrs. Milgrim came in and asked the man behind the desk if her husband had been booked on any charge. Finally this man behind the desk, I don't know what his position was, said that Mr. Milgrim had been booked, so that we knew that the rest of the people must be there. Finally they admitted that there was to be a trial that day. We attended the trial also as observers. Several of the men who had been at the Harborside Building were brought in and tried and several who had distributed at another place, the A. B. See Elevators, I believe, were also on trial.

Should I describe the trial, Mr. Frazer?

Q. Yes, please.

A. Judge Botti was presiding, was judge at the trial, and Mr. Kapelsohn was defending the organizers who had

distributed leaflets. Some of the men were charged with having violated the ordinance——

MR. HAMILL: Well, I want to make this suggestion. Of course I don't mind her describing the court room, but I don't want the witness to testify to anything that ought to be proved by records.

THE COURT: Is that record here now?

MR. HAMILL: That is my only point.

MR. FRAZER: Have you the record, Mr. Stoffer? We have the record here but we had intended to call the stenographer who took it.

THE COURT: Well, I am sure Mr. Hamill—look at it, Mr. Hamill, will you?

MR. HAMILL: We will not let that whole record go in. Was this a stenographer appointed by the court?

MR. FRAZER: No, it was the stenographer that was offered but whom the Court refused to swear.

MR. HAMILL: Well, then, the fact is that they are nothing more—this is nothing more than memoranda made by an observer. Isn't that what it amounts to? It is memoranda made by an observer who happens to be a stenographer and can take the notes down in shorthand.

THE COURT: Well, Mr. Hamill, I don't want to seem critical, but surely no court in the world is entitled to refuse a stenographic record. It is a novel thing if any court does refuse it.

MR. HAMILL: Suppose any one of us at counsel table made a stenographic report of this trial?

THE COURT: Well, no, that is not quite the case. If you got up and said, "Judge Clark, I wish an official stenographer" and I denied your request, which

I can't even conceive of my doing, or of any judge doing, then you would have the issue which appears to be the issue here, and I don't want to say that it is.

MR. HAMILL: No, I want to talk the matter over calmly, legally, with your Honor.

THE COURT: I don't want to criticise someone who is not here, in the first place, because that would not be fair.

MR. HAMILL: No.

THE COURT: I mean I never allow a single word to be said in my court without its being written down. I think that is a fundamental.

MR. HAMILL: Under the Police Court Act, a stenographer is appointed by the police judge for either one of the parties on request. Now this stenographer was refused the right to act as official stenographer. I don't know why. If your Honor holds that the Court did not have any right to do that, I suggest respectfully that there isn't any evidence. There may have been a reason for doing it, I don't know. The idea of the other side probably would be that it was capricious on the part of the Judge, but no court will hold that. Now, it was not an official——

THE COURT: I mean I don't want to criticise some other judge or someone who is not here, but I can't conceive of not having a stenographic record.

MR. HAMILL: May I say this to your Honor? Mr. Frazer said this is the stenographer who was offered and refused. We haven't any evidence of that.

THE COURT: No. Let me see that record, will you? I thought yesterday——

MR. HAMILL: Mr. Hershenstein, who seems to know —do you know something about it?

MR. HERSHENSTEIN: Yes, I understand that Judge Botti appointed an official stenographer.

MR. HAMILL: Well, tell the Court then——

THE COURT: I don't want to criticise the Judge.

MR. HAMILL: He said that there was an official stenographer appointed.

THE COURT: It is not fair to say it.

MR. HAMILL: That there was an official stenographer appointed at that trial.

MR. FRAZER: I understand, Mr. Hamill that this——

MR. HAMILL: I don't know. I wasn't at the trial.

MR. FRAZER: I understand that this is the record that was used before the Supreme Court of New Jersey on application for a writ of certiorari to review the convictions.

MR. HAMILL: Well, if this is that record, Dean Frazer, of course I have no objection—if this satisfies the Supreme Court it ought to satisfy the corporation counsel.

THE COURT: Well, will you look at it, Mr. Hershenstein, and see if it is the record?

MR. HERSHENSTEIN: We didn't take any part in that case, we don't know. That is a different case you are talking about.

MR. FRAZER: Is Mr. Rothbard here in court?

MR. ROTHBARD: That is the record.

MR. HAMILL: Who took that, Mr. Rothbard?

MR. ROTHBARD: Mr. Winard.

MR. HAMILL: Was that used before the Supreme Court?

MR. ROTHBARD: Yes, it is a copy of what was used before the Supreme Court.

MR. HAMILL: Is it? All right, all right.

THE COURT: I mean I don't want it to appear that the judge——

MR. HAMILL: No, no.

THE COURT: —refused a record, unless I know that. So I don't want any newspaper to say that he did, unless we know it.

MR. HAMILL: I want to know, of course, what it is, naturally, before it goes in. I want to be informed. Now if Mr. Rothbard says that record was used before the Supreme Court, all right.

THE COURT: Wait a minute. I will see if I—just a minute. Let me see if I can tell from the record. Give me the first page of that record, will you?

MR. HAMILL: Now, the whole record, I understand, is not going in and it cannot go in, and those parts of it which they consider relevant cannot go in, until they point out what is relevant. The can't take a whole book and hand it in and say "We present this."

THE COURT: What a minute. I think the first page will tell us. Wait a minute. I will read what it says:

"THE COURT: I will decline to permit him to be sworn. As I understand it, when he is sworn, the court selects this court stenographer, and I don't choose so to do."

Then the attorney asks that there be no proceedings until there is a stenographer. Then the court says:

"I will permit the stenographer to take the testimony, but not sworn. You may either accept that proposition or not, as you choose."

"THE COURT: Let me decide one motion now. You have made two, as I understand it; one is that you want the stenographer sworn."

ATTORNEY: "That is right."

"THE COURT: All right. I refuse to do that and I will allow you an exception."

Well, that seems to have been what happened.

MR. HAMILL: Well, I mean whatever we may think of that, we have no way to——

THE COURT: I am not going to pass on that. I just wanted to know whether——

MR. HAMILL: Your Honor is not going to pass on that?

THE COURT: —that is satisfactory to you as the record.

MR. HAMILL: As a matter of fact, that being, as I understand, the subject now of a certiorari proceeding——

THE COURT: Yes, yes.

MR. FRAZER: I will offer the record, sir.

MR. HAMILL: Sir?

MR. FRAZER: I offer the record.

MR. HAMILL: I object to it unless it is pointed out what parts of it are relevant. You can't take a book of 137 pages and throw it in and say "I offer that." What parts of it are relevant?

MR. FRAZER: Some time ago Mr. Hamill, when I was speaking to prove the occurrences in court, insisted that I should produce the record.

MR. HAMILL: Yes.

MR. FRAZER: And that was the evidence of what happened. I now produce the record, and he says he objects to the record, so I don't know what my proof should be.

MR. HAMILL: I object on the ground that the counsel must tell us what parts of this record. Now, may I ask counsel, did you ever read this record?

MR. FRAZER: I have not, sir.

MR. HAMILL: And yet you impliedly vouch for it by saying or by offering it; you are vouching to the Court, therefore, that it is relevant testimony. Now, you don't mean to do that.

THE COURT: I will allow it subject to a motion to strike out on your part such parts of it as you deem irrelevant.

MR. HAMILL: Well, but that is equivalent to a man putting in any testimony he wants and putting on the other man——

THE COURT: No.

MR. HAMILL: —the duty to pick out the bad parts of it.

THE COURT: No.

MR. HAMILL: It is his duty to put in the good parts of it.

MR. FRAZER: Well, the relevant portion, I should say, related to the conduct of Judge Botti, our bill alleging that part of the general plan consisted in using the judiciary.

MR. HAMILL: Well, now, what parts of it—have you finished, Mr. Frazer?

MR. FRAZER: Judge Botti's conduct in the trial I consider as wholly relevant.

MR. HAMILL: First of all, we object to anything that would reflect on a Judge of a court of record. The police court in Jersey City is a court of record.

THE COURT: I will allow that subject to your motion to strike out such portions as you think irrelevant.

MR. HAMILL: Now, may I ask this? Will Mr. Frazer inform the Court and counsel so we can cross-examine just what parts of this record are relevant to the conduct of Judge Botti?

MR. FRAZER: I don't know how you are going to cross-examine on the record. I am quite frank to say that. It is an exhibit. If you wish me to produce the stenographer, you can cross-examine the stenographer if you want to.

MR. HAMILL: No, I may cross-examine someone who was there.

MR. FRAZER: I am offering it as a series of verbal facts of what happened and what was said.

MR. HAMILL: But doesn't that——

MR. FRAZER: Now, if you wish to examine the man who took the record, I will be glad to produce him.

THE COURT: No, I understand Mr. Hamill does not deny—you don't deny its authenticity, do you?

MR. HAMILL: No, I am not denying its authenticity.

Now, my point is this, that this whole record of 127 pages is not a record of the conduct of Judge Botti: it is the record of a trial in which certain portions, they say, show the conduct of Judge Botti, for those are the only parts that are relevant.

THE COURT: No, I understood yesterday it was being offered to show what happened at the trial, irrespective of what the Judge did or did not do.

MR. HAMILL: If you were putting in a man's address and said he was in the city directory, you wouldn't put in the whole city directory; you would show just that part of it which stated his address.

MR. FRAZER: No, I would put in the whole city directory to show that it was in the city directory; then you could read that portion of it which consisted of his name and address.

MR. HAMILL: In other words, you would dump the whole city directory in.

MR. FRAZER: If I attempted to do it without putting in the whole directory, you would not admit it.

MR. HAMILL: Well, you would act very illegally if you did it, and you know it.

MR. FRAZER: I offer it.

MR. HAMILL: May I ask this? What is he trying to prove against or for Judge Botti, whichever it is, by means of this record?

THE COURT: Well, I didn't understand yesterday that it had anything to——

MR. HAMILL: What part of the bill of complaint is it that reflects on Judge Botti? We can't find it. And what is it he wants to prove by Judge Botti?

THE COURT: Wait a minute, Mr. Hamill. I didn't understand yesterday that it was being offered with respect to any Judge, Botti or otherwise.

MR. HAMILL: Neither did I, but he has just told us.

THE COURT: I understood yesterday it was being offered because you thought, and I think properly thought, that whatever the circumstances of the trial were, they should be related from the record. Now, there is the record.

MR. HAMILL: And he has put in the whole record. He tells us he wants to show the conduct of Judge Botti.

THE COURT: I am not a jury, so I won't be prejudiced by other parts of the record. So I will adhere to my ruling.

MR. HAMILL: I know, your Honor, but there is this: that in case this record has to be printed, we should not be put to the expense of printing 137 pages.

THE COURT: Well, we will excise it.

MR. HAMILL: Of irrelevant testimony.

THE COURT: We will excise it.

MR. FRAZER: I understood that such portions of the record as seemed relevant to counsel only need be printed on their appeal.

MR. HAMILL: All right, now; perfect. Now, will you tell us just what is relevant to Judge Botti in that record?

MR. FRAZER: All of the rulings of Judge Botti are relevant.

MR. HAMILL: And how many rulings are there?

MR. FRAZER: Well, I haven't counted them.

MR. HAMILL: You haven't read it?

MR. FRAZER: I have read portions of it, but very few.

MR. HAMILL: What portions?

MR. FRAZER: Just the portion in the very front part of it.

MR. HAMILL: I see. The part you are looking at now?

MR. FRAZER: Yes, just the few front pages—the part which the Court has read.

MR. HAMILL: And from that you reach the conclusion that it is relevant?

MR. FRAZER: Oh, no.

MR. HAMILL: The whole 137 pages.

THE COURT: All right, go ahead.

MR. HAMILL: I object to the introduction of the record on the ground that what happened before Judge Botti is not relevant in this case. I object to the introduction of the record for the purpose of proving what Judge Botti did, for the reason that what Judge Botti did is not relevant in this case, and I ask for a ruling.

THE COURT: We haven't reached, at least I didn't understand yesterday that we had reached, any evidence with respect to any police Judge, whether his name was Botti or whatever his name was. I understood that evidence was offered to show the testimony at the trial, and I so admit it. Now, if it becomes relevant to rule upon the conduct of some police magistrate at some time, I will be glad to do so, if urged.

MR. HAMILL: And your Honor will grant me an exception to the ruling?

THE COURT: I am only admitting that—yes, I certainly will—I only admit it as respects the testimony, the actual words from the mouths of the witnesses.

MR. FRAZER: And the rulings of the Court with relation to it, I take it.

THE COURT: If it affects their testimony.

MR. HAMILL: Now, the Court is admitting the words of the witnesses regarding everything that happened throughout the entire trial?

THE COURT: You may have a motion to strike.

MR. HAMILL: I may have an exception?

THE COURT: All right, you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

(Stenographic record referred to received and marked Exhibits P-2 and P-3.)

By MR. FRAZER:

Q. Miss Cox, after the trial—I assume that you stayed there?

A. Yes.

Q. And what did you do then?

A. I believe I returned to Newark, disgusted.

Q. Now, subsequent to November 29, 1937, Miss Cox, did you make any efforts to rent halls in Jersey City on behalf of the Civil Liberties Union?

A. I did; several.

Q. Will you state what those efforts were and what happened?

A. In my attempts to get halls for the Civil Liberties Union, I first phoned some friends of mine to find out what personal contacts they had in Jersey City, because I realized how difficult it was going to be. Through some of these contacts I phoned and spoke with the reverends at the Methodist Church, the Methodist Episcopal Church, and the Lutheran Church.

MR. HAMILL: Now, I object—that's all right; she spoke, the fact; but I object to anything that was said in the conversation.

THE COURT: Well, she has not said anything yet. Could you give the names?

MR. HAMILL: I mean I am objecting before she does.

THE COURT: Could you give us the names, Miss Cox?

THE WITNESS: I only recall one just now—Reverend McLoughlin, Methodist Episcopal Church. I can get the other names.

THE COURT: Yes, give us the other names.

A. (Continuing.) I also tried—well, I might finish that. I was unsuccessful in getting these halls because these men feared intimidation——

MR. HAMILL: I object to that.

A. (Continuing.) —and reprisals.

THE COURT: You must not give their reasons.

MR. FRAZER: If it please the Court——

THE COURT: We will get the witnesses here. I will make the same ruling I did yesterday. The owners of these halls will be produced.

MR. FRAZER: May I make a suggestion to your Honor?

THE COURT: And I suggest to you, Dean Frazer, that they will not fail to tell the truth. No one can intimidate witnesses in my Court. Anything they say in this Court will not result in any harm to them, I will guarantee it.

MR. FRAZER: I think your Honor cannot fully guarantee that, sir.

THE COURT: I certainly can guarantee it.

MR. FRAZER: And it seems to me that the question of the efforts made——

THE COURT: I am allowing the evidence of the refusal, but the reasons——

MR. FRAZER: The reasons which were assigned for the refusal, however,——

THE COURT: The persons assigning the reasons will appear in this court, and they will freely and fully give their testimony; and no one will intimidate them.

MR. FRAZER: Well, may I ask an exception to your Honor's ruling?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What other efforts did u make, Miss Cox?

A. I also attempted to get the Masonic Hall near Fairmount and Bergen Avenue and I tried to get the Y. M. and the Y. W. C. A.——

THE COURT: Can you give us names also there, Miss Cox?

THE WITNESS: Of the individuals?

THE COURT: Yes; or get them, if you can't remember them now.

THE WITNESS: I will have to get them.

THE COURT: Yes.

THE WITNESS: I don't recall them now.

Q. Any others?

A. All of these attempts were unsuccessful. One I tried at the Fairmount Hotel. I went over to Jersey City after having made an appointment with the new manager there, Mr. Moser. I told him the purpose of the meeting and I told him that the speakers we were going to have were going to be Congressmen——

MR. HAMILTON: I don't think it is relevant, what she told him.

THE COURT: Did he refuse to give you the hall?

THE WITNESS: He agreed to let me have the meeting hall.

THE COURT: Then he agreed. Then did anything else happen after that?

THE WITNESS: I paid a deposit. He asked me the details about the meeting——

MR. HAMILL: No, I object. "He asked me"—this evidently must be a repetition of a conversation.

MR. FRAZER: Well, there must be some testimony as to just what happened. You can't be deaf and dumb.

THE COURT: Tell us what happened.

MR. HAMILL: You are trying to prove something which necessarily rests on the evidence of another man who is not here.

THE COURT: Well, he is going to be here.

MR. HAMILL: I mean who is not here at the present time.

THE COURT: Yes, but he will be.
Just say what happened in respect to a refusal.

A. (Continuing.) Well, Mr. Moser gave me the right to hold a meeting in his hall at the date that I applied for that right. Several days, two days later, he phoned me at my office and at my home——

MR. HAMILL: Now, Miss Cox, please don't tell us what he said to you—not until the Court, his Honor, rules on it.

A. (Continuing.) As a result of the telephone conversations, I received my deposit in the mail and a letter regretting that his hall was not the type that he had described to me and could not be used for the meeting.

THE COURT: Have you got the letter?

THE WITNESS: I can give you that, too.

THE COURT: Will you bring it?

MR. HAMILL: What hall was that, Miss Cox?

THE WITNESS: The Fairmount Hotel.

THE COURT: She told us that.

MR. HAMILL: I didn't hear it. I merely call the Court's attention to the fact that in answer to the bill of particulars, that particular hall is not included in the information given in the bill of particulars. We asked in our bill of particulars for the halls and your Honor ruled that we should get a list of the halls. That particular hall is not in this list.

THE COURT: Will you show that to the other side, please? Maybe there is some error.

MR. GLAVIN: Fairmount Hotel.

THE COURT: Maybe there is some confusion about it.

MR. HAMILL: We have Fairmount Hall, but that is a different thing from Fairmount Hotel.

THE COURT: No, I don't think it is.

MR. HAMILL: Well, then——

THE COURT: Will you ask the witness? Because I don't know.

MR. HAMILL: Is this the Fairmount Hotel?

THE WITNESS: This is the Fairmount Hotel, but any attempts to get the Fairmount Hotel are unsuccessful.

MR. HAMILL: I ask that that be stricken out. Are you referring, Miss Cox, to the Fairmount Hotel?

THE WITNESS: I am referring to the Fairmount Hotel.

MR. HAMILL: That is the one on Journal Square?

THE WITNESS: The one on the Boulevard.

MR. HAMILL: Oh, on the Boulevard, near Fairmount Avenue?

THE WITNESS: Yes.

MR. HAMILL: You are not referring to the Fairmount Hall?

THE WITNESS: No, sir, I am not.

MR. FRAZER: Apparently there is a misapprehension in the report and I would ask leave to amend the bill of particulars, to change Fairmount Hall to Fairmount Hotel. That is purely a case of misapprehension.

THE COURT: I think that can be done.

MR. HAMILL: Oh, all right. Go ahead. All right.

By MR. FRAZER:

Q. Now, Miss Cox, do you know about any applications made on behalf of the Civil Liberties Union for open air meetings in Jersey City?

A. I know of one in particular.

Q. Who made the application, do you know?

A. Mr. Samuel Macri.

Q. And do you know anything of a letter from Mr. Rothbard, December 17, 1937, addressed to Mr. Casey?

MR. HAMILL: I object to that. The letter speaks for itself.

THE COURT: Have you got the letter?

MR. HAMILL: I object to it.

MR. FRAZER: It is attached—I understood Mr. Hamill to say yesterday that there would be no dispute about these letters and that he would produce the originals, or that we might use copies.

MR. HAMILL: Mr. Frazer, whatever I said, I will abide by and adhere to in this trial. There isn't any doubt that we received that letter. We received it. All right. That is the Rothbard letter.

Q. I direct your attention to the letter of Mr. Rothbard. Do you know about that application?

A. Yes, I heard about this application.

MR. HAMILL: I object. What can this witness prove other than what is contained in the letter? An application was made and denied.

MR. FRAZER: All right. Now, I am going to offer then the letter of December 17, 1937, addressed to the Honorable Daniel J. Casey, signed Samuel Rothbard, in behalf of the American Civil Liberties Union.

MR. HAMILL: And as far as any other of those papers, I will not object to their relevancy or irrelevancy at this time, and if you want to put those in, Mr. Frazer, in order to get them into the record at this time, I haven't any objection. I don't think we question their accuracy.

MR. FRAZER: The letters are attached to the bill.

MR. HAMILL: We do not question the accuracy of any of these documents, do we?

MR. HERSHENSTEIN: No, no.

MR. HAMILL: No, we do not question the accuracy of any of these documents.

MR. FRAZER: Suppose then we offer all of the letters which are attached to the bill of complaint.

MR. HAMILL: Yes.

THE COURT: You mean copies are attached.

MR. FRAZER: They are attached.

MR. HAMILL: Subject to such objections that I want to make on the ground that they are immaterial or irrelevant, but I mean as to the fact that these are true copies of genuine letters or papers, we admit that or of actual letters and papers.

Q. Now, Miss Cox, were you present at a meeting in Pershing Square last Friday in Jersey City?

A. I was.

MR. HAMILL: I object. Any evidence of anything that happened after the bill of complaint was filed is not admissible, unless the bill is amended for that purpose.

THE COURT: I think that is true.

MR. FRAZER: Continuance of the plan, sir. Mr. Hamill awhile ago accused me of neglect in not having allegations as to those things in my bill.

THE COURT: Well, why waste time on it? You can amend your bill.

MR. HAMILL: All right. Then your Honor——

MR. FRAZER: I will supplement the bill.

MR. HAMILL: If he amends his bill, we allege surprise and we ask an adjournment, to be able to meet the new matter.

MR. FRAZER: We are carrying out—we have stated in our bill, sir——

MR. HAMILL: We didn't—excuse me.

MR. FRAZER: We have stated in our bill, sir, that there was a plan, which was still persisting. If the plan had been stopped, there would have been no purpose for our coming into this court; but it is still persisting, and we wish now to prove that as late as last Friday the same system was in vogue in Jersey City; and I am offering Miss Cox for that purpose.

THE COURT: Well, I think——

MR. HAMILL: Now, if your Honor please, I want you to weigh that statement.

THE COURT: I think in your own interest you want the whole issue set out.

MR. HAMILL: If your Honor please, I want that statement weighed and considered. The bill was filed last January and he, last January, when he filed the

bill, envisioned a meeting in Journal Square on last Friday. Now, he does not mean that, surely.

MR. FRAZER: No, I didn't envision that specific meeting but I envisioned something very like——

MR. HAMILL: In other words, what he told the Court was "This is going to happen in the future." Well, we are not obliged to meet what is going to happen in the future. We could not answer that.

MR. FRAZER: My bill charges as follows: The unlawful acts of the defendants——

THE COURT: In your own interest you want the whole issue spread out.

MR. HAMILL: What?

THE COURT: In your own interest you want it all spread out.

MR. HAMILL: There is no allegation that we can answer, and we stand on our objection.

THE COURT: You may have an exception.

MR. HAMILL: And your Honor will let it in?

THE COURT: Yes.

MR. HAMILL: And if your Honor amends the bill, our objections——

THE COURT: I am not going to amend the bill.

MR. HAMILL: I beg your pardon. I mean if your Honor permits the amendment of the bill——

THE COURT: Yes.

MR. HAMILL: We then object, we then plead surprise and ask for an adjournment, time to file an answer.

THE COURT: Your motion is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Miss Cox, will you state what happened there?

A. The meeting at Pershing Square, Pershing Field, was called by the Hudson County Committee for Labor Defense and Civil Rights. I saw a handbill advertising the meeting and knew that Congressman O'Connell was scheduled to speak. The meeting was scheduled for seven-thirty. I arrived there to be with some friends between seven and seven-thirty. We went into the park, the field rather. I spoke to a policeman, asking him how many there were on duty that evening.

MR. HAMILL: Now, if your Honor please, I object to that.

THE COURT: Yes.

MR. FRAZER: This is part of the same picture, sir.

THE COURT: No, Dean Frazer, you cannot.

A. (Continuing.) I continued——

Q. Did you see policemen there?

A. I saw many policemen.

Q. How many do you think?

A. Five hundred.

Q. Will you tell us now what happened.

A. After walking a short distance down the path my husband and I and Robert Parker were recognized by Daniel Casey, Commissioner of Public Safety, who had seen us on several occasions in court—not on trial I might add—he pointed us out—not to the policemen nor to the persons whom we knew to be plain clothes men, as had been done before, but to persons who we could not identify in any way.

MR. HAMILL: I object to that. What difference does it make?

MR. FRAZER: This is one of the actions by one of the defendants.

MR. HAMILL: Is there anything wrong in a man pointing another man out to somebody else?

MR. FRAZER: Let's see what happened.

MR. HAMILL: I might point you out by reason of your distinction. No one would say that would be wrong.

MR. FRAZER: I would be very much pleased to be pointed out.

MR. HAMILL: And you would return the compliment?

MR. FRAZER: Yes.

Q. Go ahead.

A. We were pointed out and trailed——

MR. HAMILL: I object to the use of the word "trailed".

THE COURT: Yes, don't use words of the art, so to speak.

A. Well, followed.

THE COURT: Yes.

A. Word was passed along from these two men to groups of other persons who were there.

MR. HAMILL: I object. Tell us what was said.

A. These groups followed us.

MR. HAMILL: Excuse me, Miss Cox. Word was passed along to other groups? Let us know what was said?

A. We saw Daniel Casey speak——

MR. HAMILL: Yes.

THE WITNESS: Speak to other persons at the field, pointing us out.

MR. HAMILL: Yes.

THE WITNESS: These persons followed us.

MR. HAMILL: What did Daniel Casey say, that is what we want to know?

THE WITNESS: He said nothing to us.

MR. HAMILL: He merely pointed you out, Miss Cox?

THE WITNESS: He pointed us out.

MR. HAMILL: To people——

MR. FRAZER: One moment. Is Mr. Hamill starting to cross-examine the witness? I don't think he is trying to identify someone.

MR. HAMILL: Well, I tried to clarify the situation, to see what the situation was.

A. We were followed by persons to whom we had been pointed out all evening on the field. When we spoke about the possibility of Congressman O'Connell arriving there——

MR. HAMILL: I object to that.

THE COURT: Yes.

A. Congressman O'Connell arrived at the field between eight and eight-fifteen. Some of our friends recognized him and followed along with him. I saw a great surge of uniformed men and plain clothes men—these men I know—when I say plain clothes men I mean of the police force—follow—rush on Congressman O'Connell and push him into a police car driven by a uniformed policeman. I saw Congressman O'Connell struggling throughout the whole thing.

The friend who had driven us to the field left shortly after Congressman O'Connell had been taken away, saying he would return for us.

MR. HERSHENSTEIN: I object.

MR. HAMILL: I object to that.

Q. Did he return?

A. He returned but we had gone.

Q. What happened to you——

MR. HAMILL: You did not see him return?

THE WITNESS: No, we did not see him return.

MR. HAMILL: Then I object.

Q. What happened in the meantime to you?

A. We spoke to several of our friends and discussed what had happened to Congressman O'Connell.

MR. HAMILL: I object, irrelevant. What evidential value has this?

MR. FRAZER: It has no evidential value but it goes to the picture.

MR. HAMILL: That picture seems to bother you terribly. You will never be happy until you get the picture in.

Q. What happened?

A. Robert Parker and I went to wait at the corner where we were expecting this man to come and pick us up. While we were waiting several police were around. These same groups of persons who had trailed us—who had followed us around early in the evening were around the corner and kept milling around on the pavement itself or up into the corner of the field. While we stood there we saw several threatening motions.

MR. HAMILL: I object.

MR. FRAZER: Threatening motions. She is describing an act.

MR. HAMILL: Yes, that is a conclusion.

THE COURT: Sustain the objection.

MR. HAMILL: This is a conclusion. What we want to know is the fact——

THE COURT: I have sustained your objection.

Q. You saw certain motions?

A. I saw a man make a fist as if to swing at my husband.

MR. HAMILL: I object.

THE WITNESS: Those are acts.

MR. FRAZER: Yes, that is an act.

Q. What happened? Did he swing?

A. He was—a companion spoke to him at that time and he said, "No, let's wait until we can get the chief, too."

MR. HAMILL: I object to that, this conversation not in the presence of the defendants. The chief was not there at the time.

Q. Was the chief there at the time?

A. We don't know who the chief was at the time.

MR. HAMILL: He didn't hear this conversation?

A. We heard this conversation.

MR. HAMILL: That is, you heard it. The chief didn't overhear it?

A. I don't know who the chief is. I don't know whether it is a capital "C" or a little "c."

MR. HAMILL: The conversation is irrelevant.

Q. What happened after? Did the chief come?

MR. HAMILL: Has your Honor ruled? She heard someone say "Wait until we see the chief."

THE COURT: I will sustain the objection.

Q. Now, will you say what happened? Did anything happen afterward, whether the chief came or not?

A. Bob Parker recognized someone who had beaten up pamphleteers——

MR. HAMILL: I object, irrelevant. Now, if they want to say Bob Parker recognized somebody, never mind why he recognized him——

MR. FRAZER: Yes, keep to what you saw.

A. Robert Parker turned to me and said——

MR. HAMILL: I object to what he said.

THE COURT: You will have to have him here.

MR. FRAZER: Apparently she is not allowed to say what she said. Will he be allowed to say what he said?

MR. HAMILL: Under your skillful guidance he may be able to tell many things, and if he does not say it you will say it for him.

A. Upon hearing what my husband said to me, he and I left quickly to the corner upon which we had been standing and where others stood to get a bus. Waiting for the bus were two friends of ours. As we approached them our attention was directed toward them by a whistle which was blown——

Q. Yes, I guess there was a whistle all right.

A. And I saw several persons rushing over from the other corner, led by a man whose arm was up, outstretched, with his fist. I called "look out." That blow hit my husband between the eyes.

MR. HAMILL: I object, unless in some way it is connected with the conduct of the defendants. It may have been some brawler who was out there.

MR. FRAZER: I object to counsel's connotations.

MR. HAMILL: I don't see how you are going to blame these defendants.

Q. Did anything happen to you, Miss Cox?

A. I was pushed out of the way and into the street, knocked off my balance——

MR. HAMILL: By whom, may I ask, Miss Cox? By the crowd?

A. By the person, by this man whom I later saw beating my husband.

MR. HAMILL: Unless she connects this man, unless she shows agency in some way, or connects him with them——

THE COURT: You will have to have your husband tell what happened to him.

MR. FRAZER: She can say she saw him being kicked.

MR. HAMILL: She is describing the events that happened at a great big mass meeting and offering it as evidence against these defendants.

THE COURT: Have you any knowledge that they were connected with or were officials of Jersey City?

THE WITNESS: I cannot prove it at this time.

MR. HAMILL: I move that it be stricken out.

THE COURT: Strike it out.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Miss Cox, you say you are a member of the New Jersey Civil Liberties League——

MR. FRAZER: Just a few more questions, if I may?

DIRECT-EXAMINATION (Continued).

By MR. FRAZER:

Q. Did you see Sam Macri there that night?

A. Sam Macri spoke to me twice—three times during the evening.

Q. Did you see him at the end of the evening or was he——

A. I saw him as I went into the field. He asked when O'Connell was coming and——

MR. HAMILL: Go ahead, I don't mind. There is no doubt O'Connell came there.

Q. Was he all right when you saw him?

A. He was all right when I saw him. I saw him later in the evening after Mr. O'Connell had visited the field and was no longer there, and he spoke to me later in the evening after Mr. Parker and I were waiting on the corner.

Q. Do you know what happened to him afterward?

A. Yes.

MR. HAMILL: Do you know of your own knowledge?

THE WITNESS: I was not a witness to it.

Q. Have you seen him since?

A. I have not seen him since.

MR. FRAZER: All right.

Q. Just go back; as I understand it you say you saw Director Casey directing certain persons or speaking to them with relation to you and pointing you and your husband out?

A. Yes.

Q. Now, were any of the persons who were in the group at the corner when your husband was struck, any of those to whom Director Casey had spoken?

A. Director Casey spoke to two men. One of those two men I saw——

MR. HAMILL: Will you say that again?

THE WITNESS: That attacked my husband.

Q. One of the two men whom Director Casey spoke to about you—pointing you out—was in the group which attacked your husband, is that right?

A. Correct. There were many other persons to whom——

MR. HAMILL: So what? I object to the relevancy of this.

MR. FRAZER: I submit now that the testimony is relevant as directly connected with Director Casey.

MR. HAMILL: How does that connect Director Casey?

MR. FRAZER: She stated just a moment ago that the two men that Director Casey had spoken to, calling their attention to her and her husband, and who subsequently had gone around and spoke to the other group, pointing them out, that one of those two men was in the group which came over and rushed her husband and struck him.

MR. HAMILL: And that therefore that is reflected on this defendant? Has he committed a crime in pointing them out?

THE COURT: Would you know them if you saw them again?

THE WITNESS: I would know the men to whom Director Casey spoke. I would know the two men to whom he spoke, one of whom I later saw attack my husband. I would also know the man who struck my husband between the eyes.

THE COURT: Were they in uniform?

THE WITNESS: They were not in uniform.

THE COURT: I think we will have to wait until Director Casey is a witness.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Miss Cox, you say you are a member of the New Jersey Civil Liberties Union; is that correct?

A. I am a member at the present time—I am on the executive board.

Q. You are a member of the executive board?

A. Of the New Jersey Civil Liberties Union.

Q. A member of the executive board of the New Jersey Civil Liberties Union. Now, is that connected with the American Civil Liberties Union?

A. It is an affiliate of the American Civil Liberties Union.

Q. It is an affiliate of the American Civil Liberties Union. Is your body an incorporated body?

A. No.

Q. Are you a corporation?

A. No.

Q. I mean are you incorporated by papers filed in Trenton?

A. No, not to my knowledge.

Q. Now, Miss Cox, you told us about applying to the owner of Fairmount Hall.

A. Yes.

Q. Do you know his name?

A. The Fairmount Hotel.

Q. Fairmount Hotel.

A. I applied to the manager.

Q. Do you know his name?

A. Moser.

Q. Now then, as to the other places you tried to rent, do you know the names of the persons to whom you applied?

A. I can recall only one at the present time, the others I will be glad to give you.

Q. Which one do you recall at this time?

A. The Reverend McLaughlin. I believe it is William McLaughlin.

Q. What hall was that?

A. The Methodist Church.

Q. Located where?

A. I think on Magnolia, something like that, street or place or avenue.

Q. Did you try to rent Fairmount Hall at Bergen Avenue and Fairmount?

A. Yes.

Q. And were you successful?

A. I was.

Q. You did rent that, but the others you could not?

MR. FRAZER: She stated so on direct examination, she had no difficulty on Fairmount Hall.

MR. GLAVIN: The testimony on direct examination was she could not rent Fairmount Hall.

MR. FRAZER: I beg your pardon. She made that distinction. She said on direct she had no difficulty in getting Fairmount Hall. It was Fairmount Hotel she could not get. She made that statement on direct.

MR. HAMILL: I think that is all, Miss Cox.

(Witness excused.)

JULES NYDES, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

MR. HAMILL: What is his address?

THE WITNESS: 339 East 16th Street, New York City.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Nydes, what is your business?

A. I am district representative for the United Electric Radio Machine Workers. I am affiliated with the CIO, District No. 4.

Q. Are you a college man?

A. I am.

Q. What degrees do you hold?

A. I hold a B. A. degree.

Q. From what university?

A. University of Wisconsin.

Q. With honor?

A. I graduated cum laude in 1934, major study was philosophy.

Q. Were you in Jersey on the night or on the day of November 29, 1937?

A. I was.

Q. Will you relate the events of that day, so far as they affected you?

A. I arrived at the Grove Street Station at about 6 A. M. It had previously been arranged for Albert Pissadi, a field organizer of the United Mine Workers of America, Albert Smith, who occupied the same position, Niel Brand, national representative of my union and myself, to meet at Grove Street in the car owned by Albert Smith at six-thirty.

When I arrived at six o'clock I found a number of policemen in uniform at the station on the platform. I saw a number of uniformed policemen on the outside.

I went to a cafeteria in order to wait for six-thirty to arrive. While I was waiting there a number of remarks were made——

THE COURT: What day do you say this was?

THE WITNESS: November 29th.

Q. By whom?

A. By the people who were at the counter. These remarks had reference to what would occur at Jersey City on that morning. One of the counter men in particular said——

MR. HAMILL: Never mind what they said. I object.

THE COURT: Tell us what happened, not what was said.

THE WITNESS: Very well. At six-thirty I met Albert Smith and Albert Pissadi, who came to Grove Street in their car. I got into the car and we decided to wait for Niel Brand. As soon as the car parked a

police car rolled up alongside of us. Two police officers got out. We were asked to identify ourselves, which we did.

MR. HAMILL: Did you tell them that you were a graduate cum laude?

THE WITNESS: That was not part of the identification they required. They asked what our business was in Jersey City that morning and we informed them what our business was. He then asked us to get out of the car and both officers proceeded to search us. I questioned this procedure and the officer——

MR. HAMILL: I object, what he questioned.

Q. What he did.

MR. HAMILL: That means he said something and he is not allowed to testify to what he said.

MR. FRAZER: I thought he was.

MR. HAMILL: As to what took place.

MR. FRAZER: I thought a moment ago it was only what somebody else said that he could not testify to.

MR. HAMILL: No. That comes under the simple rule of self-serving declarations, and you know the rule.

MR. FRAZER: He is testifying, may it please the Court, as to what happened. We are now dealing with the police.

THE COURT: Yes, tell us what happened.

A. I asked him whether he had a warrant to search me. He said he did not and that it was not necessary, that this procedure was not unusual, since this was the treatment——

MR. HAMILL: I object——

THE WITNESS (Continuing): —accorded to most non-residents——

MR. HAMILL: I object.

MR. FRAZER: This is the policeman talking now. I have a right to know what the policeman said.

THE COURT: You may answer.

MR. HAMILL: Not unless we get the name of the policeman. What was the name of the policeman?

THE WITNESS: I asked the policeman for his name but he said it was none of my business so I took his badge number and I believe I have a record of it.

MR. HAMILL: Let me have the badge number then.

THE WITNESS: I don't have the record of it on my person.

MR. HAMILL: Will you get the badge number?

MR. FRAZER: May I ask Mr. Hamill to address his remarks to the Court. He is continually bickering with my witnesses.

MR. HAMILL: If he has the badge number, then I ask your Honor to instruct the witness to produce the badge number.

THE COURT: He said he had.

MR. HAMILL: Well, if he does not produce the badge number, then it is my motion that his testimony be stricken.

MR. FRAZER: That is subject to a future motion, isn't it, and a future passage?

THE COURT: Go ahead.

THE WITNESS: The police officer said that this procedure was not unusual and that this treatment was accorded to anyone who came into Jersey City, who was not a resident of Jersey City.

He then looked in the back of the car where there were 500 leaflets. He seized these leaflets and I again asked him why he was confiscating private property. He replied that we might retrieve these leaflets through due process of law.

MR. HAMILL: What did the officer say? That you might retrieve——

MR. FRAZER: Retrieve them through due process of law.

MR. HAMILL: The policeman said these things, that you might retrieve——

THE WITNESS: I don't think he used the word retrieve.

MR. HAMILL: I wanted to know if we had a policeman who was graduated cum laude. I never knew it.

THE WITNESS: He said we could get them back by due process of law.

Q. What did he do with those leaflets?

A. He took them into his car and asked us to wait. After about fifteen minutes a plain clothes man came up and asked us what we were doing in Jersey City. We replied that it was our intention to distribute these leaflets outside the gates of various factories in which we were interested in Jersey City. He asked me if I was aware of the fact that there was an ordinance prohibiting such distribution? I said I was not aware of that.

He then asked us what we intended to do. He asked whether we wanted to distribute. We pointed out to him it was not possible for us to distribute since he had seized the leaflets. He said: "What if I give you some back, would you distribute them?" We asked would he guarantee we would not be arrested? He said: "We will give you no guarantee." He then asked us to leave Jersey City.

MR. HAMILL: Now I ask that that all be stricken. What value has it?

A. (Continuing.) We went around the block a few times with the car, then proceeded directly to the Westinghouse Elevator Corporation.

Q. Had Mr. Brand come in the meantime?

A. Mr. Brand had not come. When we got to the Westinghouse Elevator Corporation we saw Mr. Brand, together with four others. Their names are Frank DiGiordano, a member of Local 421 of our union and a resident of Jersey City; John McCullough, also a member of Local 421; Frank Huzzan, likewise a member of Local 421, a resident of Jersey City, and Joseph Kish, a member of Local 421 and a resident of Jersey City. Frank DiGiordano, Mr. Albert Smith and Huzzan went toward the building. I got out and proceeded to distribute circulars outside of the Westinghouse Elevator Corporation. Also distributing them at the time were the four others I mentioned, namely, DiGiordano, Kish, McCullough and Brand.

THE COURT: Have you a copy of those circulars?

THE WITNESS: I have not one with me but I think one has been submitted in evidence.

THE COURT: The same one?

THE WITNESS: The same one. We were distributing these leaflets for about fifteen or twenty minutes and around this time two police cars came up, two officers got out, one police officer asked for a leaflet. He read the word "C. I. O." then he turned to us and said, "You are under arrest." I asked "What is the specific charge?" He said, "You will find out when you get to court."

We waited outside of the factory for about fifteen minutes and another car came up and we were taken to court. I don't know the name of the court, it is the court over which Judge Botti presided, however.

It was now about nine o'clock in the morning. We were kept there until two o'clock when we were brought to trial.

THE COURT: Is that the same trial we have been speaking about, Mr. Frazer?

MR. FRAZER: Yes, sir.

THE WITNESS: At the conclusion of the trial, I, together with six others were sentenced to five days in the city jail. Those five days I served.

Q. Were there any others with you at the time beside the five?

A. At the time of the trial?

Q. Yes. Were five the total number of them?

A. Seven was the total number. Shall I name the seven?

Q. Yes.

A. These seven, the six in addition to myself, were: Niel Brand, Albert Pissadi, Frank DiGiordano, John McCullough, Frank Huzzan and Joseph Kish.

THE COURT: Did you make application for bail?

THE WITNESS: I personally?

THE COURT: Yes, through someone else, your counsel.

THE WITNESS: Well, as soon as we were finished we were locked up and we didn't see anyone for two days afterwards, so I really don't know.

Q. Did you attempt to communicate with counsel, ask leave?

A. I believe that while we were waiting——

MR. HAMILL: I object, if your Honor please.

THE COURT: Don't tell us anything you don't know, please. Just tell us what you know.

THE WITNESS: Well, I was informed that counsel had——

MR. HAMILL: I object what he was informed.

MR. FRAZER: We will prove that in another way. Are you one of the prisoners in the writ of certiorari which was recently allowed by the Supreme Court?

A. I am.

Q. And as far as you know there has been no withdrawal of that prosecution?

A. As far as I know there has been no withdrawal.

Q. During your period in jail did you sign any papers, appeal papers?

A. I did not.

Q. Do you know whether there were efforts made to bring them to you?

MR. HAMILL: Oh, Mr. Frazer, I object.

MR. FRAZER: I will prove that in another way. Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Now the officers that you met when you first reached Jersey City said, "This is the treatment accorded to anyone who comes into Jersey City," did he?

A. Those were not his exact words.

Q. Well, you purported to give us his exact words. That is what we want.

A. When he searched me I asked him why he was doing this and whether I had committed a crime and whether he had a warrant.

Q. What did he say?

A. He replied: "Don't get sore about it, we do this to anybody who is a non-resident of Jersey City, who comes in without Jersey City license plates."

Q. Now that sounds like a cop talks, doesn't it? And he told you you might get them back where?

A. Get what back where?

Q. Get the circulars back that were taken from you. What did he say about that?

A. He said you can get them back—he didn't say this, this was said by a plain clothes man who came later.

Q. What did the plain clothes man say?

A. He said, "You can get the circulars back through due process of law." He didn't say where we could get them back.

Q. He said "Through due process of law?"

MR. FRAZER: Through due process of law.

Q. The plain clothes man said that?

A. Yes.

Q. Notwithstanding that he told you that there was an ordinance against distributing circulars?

A. I believe both the officer and the plain clothes man referred to the ordinance.

Q. You never knew there was an ordinance until then, did you?

A. No, I did not.

Q. Don't you read the newspapers?

A. Yes, I do.

Q. And you never saw anything about the battle going on about——

A. I certainly did.

Q. You did not?

A. I certainly did.

Q. Didn't the newspapers inform you that there was an ordinance in Jersey City that was being enforced against the distribution of literature?

A. I was fully aware of the fact of police interference with the right to organize and distribute literature. I was not aware of the fact that the Jersey City government found it necessary to pass an illegal law for this purpose.

Q. That is—so when did you reach the conclusion that they should not have passed an illegal law? Before you came in, didn't you?

A. As soon as I was aware that there was such a law.

Q. And that was before you came in?

A. I said it was after I had learned of the law.

Q. Well, you came in and found out there was an ordinance, before that you never knew anything about it?

A. Not about the ordinance.

Q. You knew that the police were preventing people from distributing circulars?

A. I knew that. I knew other things, too.

Q. Now how long before you came into Jersey City was it that you knew that fact?

A. That the police were interfering with distribution?

Q. Yes.

A. Oh, I would say about a month or so.

Q. And why did you think they were interfering with them?

MR. FRAZER: I object.

MR. HAMILL: Wait a minute, this is cross-examination. Why did you think—under an illegal law.

A. Because I was aware of the fact that Jersey City was a haven for sweat shops and for factories with very poor working conditions.

Q. Yes.

A. I knew that they could not——

MR. FRAZER: Let him finish his answer.

MR. HAMILL: Let him go ahead. I want to give him a chance to reveal himself, his animus and everything else. Let him go right ahead.

MR. FRAZER: May we have that last struck?

MR. HAMILL: Then I will say "spew his bile," I will put it that way.

MR. FRAZER: Go ahead, Mr. Nydes.

A. I was aware of the fact that Jersey City is a place where there was very little organization, and I knew that this was so because there was police interference which I had heard about——

Q. Now, stop right there.

MR. FRAZER: Let him finish.

MR. HAMILL: He has finished now.

MR. FRAZER: He has not finished.

MR. HAMILL: He has answered my question and I have let him go as far as I am going to let him go.

MR. FRAZER: He has not answered it and I submit the witness has a right to continue to give his answer.

MR. HAMILL: Providing he speaks relative to the question.

Q. Now let me get the question and then compare the witness's answer.

MR. FRAZER: Will the stenographer repeat the question?

MR. HAMILL: Yes, let's have the question.

(Questions repeated by stenographer as follows):

"Q. Now how long before you came into Jersey City was it that you knew that fact?

"A. That the police were interfering with distribution?

"Q. Yes.

"A. Oh, I would say about a month or so.

"Q. And why did you think they were interfering with them?

"MR. FRAZER: I object.

"MR. HAMILL: Wait a minute, this is cross-examination. Why do you think—under an illegal law.

"A. Because I was aware of the fact that Jersey City was a haven for sweat shops and for factories with very poor working conditions."

MR. FRAZER: Now he is expressing why he thought so.

MR. HAMILL: Now, if your Honor please, he thought they were interfering with an illegal law because there were sweat shops.

Q. Well, what was the illegal law that you thought they were interfering with?

A. As I listened to the question I didn't hear the last part of it. Why did I think they were interfering because there was an illegal law? I didn't hear that.

Q. No. Answer this question. What illegal law were they interfering with?

A. I don't understand the question.

Q. You said that they were acting under an illegal law.

THE COURT: "Ordinance" he means.

Q. All right. If you mean an ordinance, then what illegal ordinance did you think they were acting under?

A. At which time?

Q. At the time you became informed of the fact that police were interfering with the distribution of circulars?

A. At the time I became informed of the fact that police were interfering with the distribution of circulars I was not aware of the fact that there was an ordinance against such distribution. I merely assumed at the time that such interference was done without any law at all.

Q. Oh; did you inquire from anyone to find out?

A. No, I didn't.

Q. And didn't you see the newspaper account of the fact that Jersey City was invoking an ordinance against the distribution of circulars?

A. I saw such account after November 29th.

Q. You read the newspapers before November 29th?

A. Yes, I did.

Q. And don't you know that for weeks and months before that the newspapers carried columns on the subject of the ordinance in Jersey City? You know that?

A. As far as I remember the newspapers referred to the fact that Mayor Hague didn't want the CIO in Jersey City and referred to the ways and means whereby he would keep the CIO from Jersey City. That is my recollection of the newspaper accounts previous to November 29th.

Q. And didn't you read in the papers that one of the means was the invocation of an ordinance against the distribution of circulars?

A. I don't recall it.

Q. Didn't you read that? And that he was keeping it out by means of that ordinance?

A. I answered that question.

Q. Well, answer it again.

A. No.

Q. You did not?

A. No.

Q. And the first you knew that was when you came into Jersey City and the policeman told you?

A. That is correct.

Q. Now after he told you there was an ordinance, I suppose as a law-abiding citizen you then did not attempt to distribute circulars, did you?

A. No. I did attempt to distribute circulars.

Q. After you learned of the ordinance?

A. That is right.

Q. Why did you want to distribute circulars after you learned that there was an ordinance against it?

A. Because as one of my duties in the organization of the unorganized—that was one of my duties and I was interested in organizing the unorganized.

Q. And whether there was a law or no law, you determined you would go on with your duties?

MR. FRAZER: I object.

MR. HAMILL: This is cross-examination.

THE COURT: I cannot understand, Mr. Hamill, how you think this ordinance could be tested. I would be glad to be informed about it. You don't think, certainly, that any municipal unit can pass an ordinance or do anything else which is unconstitutional just because it is on the books?

A. It can never be tested?

MR. HAMILL: It can be carried up by certiorari.

THE COURT: That is exactly what happened in this case.

MR. HAMILL: I want to bring out this fact, which is evident to your Honor and affects the credibility of this witness. He knew nothing about the ordinance until he came to Jersey City. Then he said he knew all about the ordinance and he came to Jersey City to break it.

THE COURT: I understand that all of them knew about the ordinance and they thought it was unconstitutional and they adopted the only means of testing it. If there are other means, maybe that would be a matter of argument.

MR. HAMILL: If your Honor understands that, I am finished.

Q. Now, what union is it you say you belong to?

A. United Electrical Radio and Machine Workers of America.

Q. Have they a local in Jersey City?

A. They have, yes.

Q. Where is that located?

A. I believe it is 605 Grand Street. I am not sure of the address.

Q. Who was the head at 605 Grand Street?

A. You mean who is the local president?

Q. Yes.

A. I believe the name is Leonard Vena.

Q. How long have they been established in Jersey City?

MR. FRAZER: What is the object of this?

MR. HAMILL: They were evidently never interfered with in Jersey City.

MR. FRAZER: Is this cross-examination of this witness? I am just curious if it is cross-examination.

MR. HAMILL: I think it is testing this gentleman's credibility.

THE COURT: That is sort of a catch-all question? Do you want to make him your own witness?

MR. HAMILL: No, I don't want him for my own witness. That is all.

(Witness excused.)

AARON GILMARTIN, called and sworn on behalf of the plaintiffs, being examined, testified as follows:

MR. HAMILL: Address, please.

THE WITNESS: I now live in Yonkers, New York.

MR. HAMILL: What street?

THE WITNESS: 64 Shelly Avenue.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your profession, Mr. Gilmartin?

A. I am an ordained minister.

MR. HAMILL: A what?

THE WITNESS: An ordained minister.

THE COURT: What denomination?

THE WITNESS: Unitarian.

Q. Now, in company with Mr. Clendennin and Mr. Hertzberg, I think——

A. Yes.

Q. Did you come to Jersey City on the morning of November 29, 1937?

A. I did.

Q. And you came from where?

A. I came from Newark, having arrived there from an out-of-town week-end trip.

Q. And you then went by tube to Jersey City?

A. That is correct.

Q. And from there to 76 Montgomery Street?

A. Yes.

Q. Will you say what happened, what you noticed when you came to the City of Jersey City and what occurred on your arrival at 76 Montgomery Street, and thereafter during the day?

A. First at the Tube Station, both below and at the street level I noticed a number of uniformed policemen. At the entrance to 76 Montgomery Street, arriving there, still quite early in the morning, a matter of about six-thirty, I met Edward Levinson, the labor organizer of Newark, and John Holley, an organizer in the New Jersey district for the Textile Workers Organization Committee.

As I have already said I was with Mr. Clendennin and Sidney Hertzberg. We all had bags, in addition to which I had a brief case and Mr. Hertzberg had a portable typewriter. We talked for a few minutes with Levinson and Holley on the sidewalk of 76 Montgomery Street and John Holley said, "Here come the police." Clendennin, Hertzberg and I entered the building in that order. Being the last I was able to see appear from around the corner, an exodus of more policemen—rather plain clothes men—and there were more men in uniform who rushed up the sidewalk in the direction of the office at 76 Montgomery Street. Being the last one in I was caught in the revolving door, I was unable to get clear of the door and into the vestibule. I was pushed through the door into the vestibule and held there by a plain clothes man. Other plain clothes men came through the revolving door, seized Mr. Hertzberg and one seized Mr. Clendennin halfway up the flight of stairs, which was the point where he had been able to get at that time.

A plain clothes man who had gone after Mr. Clendennin pulled him rather forcibly down the half flight of stairs and stood us all up in the vestibule. He asked us what we had in these bags. Mr. Clendennin protested, asking by what

right they were stopping us, and by what right did they ask us what was in our possession. The men refused to answer.

They put us through the revolving door out onto the sidewalk in front of the building, and seeing a uniformed policeman, Mr. Clendennin turned to him and called upon him to ask the man in plain clothes who had seized him forcibly and pulled him down the flight of stairs. The man in uniform said something but another man in plain clothes stepped forward and said he was in charge and would be responsible for the actions of these people. Mr. Clendennin asked him if he was an officer and if so to produce his badge. The man said he was an officer and produced his badge on which the title "Deputy Chief." He ordered our bags opened. Our suitcases were pulled open on the sidewalk. My brief case was gone through, the literature and printed matter which I had and which had the name of the organization, the Workers Defense League, was ransacked and even the case of Mr. Hertzberg, carrying his portable typewriter, was opened and handled—well, as a typewriter should not be handled.

After going through our clothing and papers and other things which were in our bags, the man in charge said, "Well, that is all right; you can go in now, you are gentlemen." And we were dismissed in that manner and allowed to proceed into the building at 76 Montgomery Street.

Whereupon we went upstairs to the office of the Boot and Shoe Workers Union. At the office of the Boot and Shoe Workers Union we found a number of other people, more came in in the succeeding minutes while we were there, and after a short time, about forty or fifty people, men and women, started from the office of the Boot and Shoe Workers Union upstairs to go out on the street and to proceed in the direction of the ferry and tube entrances in front of the Harborside Building. Some of these people had circulars which were to be distributed. I had some of these circulars myself. Others were there and went along without circulars, apparently just to observe just what went on.

I proceeded with this group of distributors down Montgomery Street in the direction of the Harborside Building. There were a number of radio police cars, men in uniform and plain clothes men all along the street. As we approached the Harborside Building I was stopped and told that I could not give out the circulars, whereupon I continued to give out circulars. I was taken by the arm by a plain clothes man who said I was under arrest for distributing circulars. He then seized Sam Macri and marched us both across the street where he delivered us over into the custody of another plain clothes man. This plain clothes man had in his custody three or four other people from the group of distributors. We were held there for a few minutes by this plain clothes man. He moved us down the street a few steps to the entrance of a bank building where a bank worker, a floor man or something, was cleaning the brass on the name plate in front of the bank, the bars in front of the bank—the iron grill barrier at the doorway—was opened and the plain clothes man tried to push us into the vestibule of the bank behind this opening of the bank, whereupon this bank worker protested and said this was a bank, this was not the legal hour for the bank to be open, and that he was there to protect the bank and we could not go into the vestibule and he kept us and the plain clothes man from going into the vestibule of the bank.

At that point the plain clothes man said, "Why don't you go back to New York and take the ferry?" Macri said he was not a New Yorker, that he lived in New Jersey, and he didn't want to go to New York, whereupon the plain clothes man said, "Well, go along anyway." I protested that I be told whether I was under arrest, and if I was under arrest I wanted to be taken to the police station and to be arraigned. The plain clothes man turned his back on me and the others who had been held up to that point, and finding ourselves thus left to our own, I recrossed the street and rejoined the group of distributors.

THE COURT: I want to read into the record—we will stop now, Mr. Witness—I have looked up and I have

verified my recollection of your statute, Congressman Hamill, Chapter 173, Treason and Offenses against the Government, under article 3, entitled "Anarchy." It has only been passed on, as far as I can currently find out, at least, in one case, and that is the case of The State v. Tachin.

MR. HAMILL: Is that by Justice Bergen?

THE COURT: No, Justice Swayze of the Supreme Court of New Jersey, 106 Atlantic, page 145.

MR. HAMILL: I can give you another case. Did I give your Honor the book yet?

THE COURT: Yes.

MR. HAMILL: I have a yellow sheet of paper there. It has been passed upon by Justice Kalisch and I think it has been passed upon——

THE COURT: Justice Kalisch decided the whole thing was unconstitutional, "The right of citizens to express their sentiments with freedom in a proper way could not constitutionally be taken away, and as long as the Constitution has vigor men may criticize the administration" then he goes on to say "the first part of the section condemns advocacy of such subversion or destruction; the last part condemns the attempt to incite, or abet, promote or encourage hostility or opposition, having in view the same subversion or destruction by force. Thus construed the statute only makes criminal the advocacy or the attempt to bring about the condition of what everyone would recognize as crime, though they might attempt to justify it as revolution. But revolution is a defense only when it is successful. The right of free speech cannot be properly construed to protect such an abuse of freedom."

So, construing the statute, he held it constitutional. He then was affirmed——

MR. HAMILL: He held that the law was constitutional?

THE COURT: As so construed. It was affirmed by the Court of Errors and Appeals in 108 Atlantic at page 318. There were two dissenting opinions, one of them by Justice Minturn of your fair county, and he expressed his vigorous dissent, particularly on page 320.

I am saying that so that in presenting your defense you may construe the statute in that way, if you will. We will adjourn now until 2 P. M.

(Adjourned to 2 P. M.)

AFTERNOON SESSION.

THE COURT: All right, go ahead, Dean.

MR. FRAZER: I have, if it please the Court, the list that I promised to give Mr. Hamill of industries in Jersey City (handing to Mr. Hamill).

MR. HAMILL: And you want me to agree to the propositions contained in this——

MR. FRAZER: In that carbon.

MR. HAMILL: Just initial them so that there will be no doubt about identification.

MR. FRAZER: All right.

AARON S. GILMARTIN, resumed.

By MR. FRAZER:

Q. Mr. Gilmartin, where have you gotten in your adventures?

A. I think I had gotten to the point where I said that after my arrest, or alleged arrest, and release I recrossed the street and rejoined the distributors.

Q. Will you go on from there.

A. I obtained some more leaflets from the distributors and started again to give out the handbills. A number of

plain clothed and uniformed policemen, in apparently concerted action, began to go systematically through the group of distributors, taking away from each one in turn the handbills which they possessed. The handbills which I had were so seized by a plain clothes man. We were herded by this group of officers in the direction of the ferry and told that we would have to take the ferry and go to New York. There were protestations from the entire group, many people saying that they did not live in New York and didn't want to be put on the ferry to go to New York. One of the officials, I don't know now whether it was a plain clothes man or a uniformed policeman, said, "Well, we have arrested some of your people. Now, why can't the rest of you behave?"

It was rather informally agreed that they wouldn't put us on the ferry if we would return to the union office. At least the group in which I was turned about without any opposition on the part of the uniformed or non-uniformed policemen, and returned to the union office at 76 Montgomery Street. There after a short time a number of us started out a second time with handbills. When I reached the vestibule on the ground floor of the building at 76 Montgomery Street, along with a number of these other people, we found that the revolving door was blocked on the outside by plain clothes men and uniformed policemen. The door was held in such a way that it would not go around, and we could not get out of the building. While we were held there, prisoners as it were, a number of cars drove up in front of the building, at least cars came up and stopped within the view that we had from the doorway of the building; whereupon the men stepped aside from the revolving door on the outside and, turning the door, beckoned that we could then come out, and one by one we were let out. I should say rather one by one the people started to go out, only one at a time. Each one, as he appeared on the opposite side of the revolving door on the sidewalk, was seized by these uniformed and plain clothes men, his literature, handbills were taken from him, he was frisked and searched,

and then led across the sidewalk and put into a waiting car, and after two or three were put into one that car drove off and another car pulled up. Seeing this happen a number of times, I, together with a number of others, decided that we would not go out in this way and just walk into the arms of the waiting officers. So we stood back in the vestibule of the building and just waited to see what would happen. When no more people went out of their own accord through the revolving door, the uniformed and non-uniformed officers came into the building through the revolving door themselves, and there started to frisk and search those of us who remained in the hallway. I was standing with Mr. Hertzberg. A non-uniformed officer approached him and took his literature away from him. Mr. Hertzberg asked for his identification, asked specifically if he could see his badge and get his number. The officer said, "Yes," but not wearing his badge, he made no move to produce it so that Mr. Hertzberg could see it. A few minutes later this same plain clothes man approached me, took my handbills from me. I asked the same question as Mr. Hertzberg had asked: "Where is your identification, your badge, as an officer?" After much searching of his pockets he produced a badge and I noticed the number, which was No. 102. Mr. Hertzberg and I were then both moved forcibly into position in front of the revolving door and in turn put through the revolving door, one of the non-uniformed policemen making the remark, "Why don't you act like gentlemen?"

Being put through the revolving door, we were handed over to a uniformed policeman who led us across the sidewalk to a waiting car, and Mr. Hertzberg and I were placed in the waiting car. The uniformed policeman wore the badge number 134. The car was driven by one man in the front seat and another man in plain clothes climbed into the rear of the car with Hertzberg and myself and we were driven away from in front of 76 Montgomery Street. Hertzberg asked the man with us where we were being taken? The man replied: "To headquarters."

I do not know Jersey City streets very well, but from appearances we traveled a rather circuitous route and finally drew up in front of a police station and were led into a room which was marked "Second Branch, Department of Detectives." There we were told to be seated, and we sat there for some fifteen or twenty minutes, while our abductors, or the men who were in the car with us, conferred with somebody in an inner office. After that delay, being held in the office of this Department of Detectives for about twenty minutes, we were then led out of this room and out of the building, onto the sidewalk, and again put into the waiting car. While on the sidewalk I saw Mr. Clendennin and a Miss Nancy Cox approaching the building, and I had the opport ity to announce to them in a loud voice that we didn't know where we were being taken nor what was happening to us. I was shoved rather forcibly into the car at that point and the car drove away. Again it had two men in it, two non-uniformed men, one driving, one in the back seat with us. We drove then for some time, finally through a park, and we were put out of the car on the other side of this park at what we discovered to be the corners of Communipaw and Marcey Avenues, which I believe is either at or near the boundary line of the Town of Kearny. At that point Mr. Hertzberg and I returned to 76 Montgomery Street for the primary purpose of obtaining our bags and to ascertain what had happened to the others in our group of distributors. When we arrived at 76 Montgomery Street we obtained our bags and went on to New York City.

Q. Was there any charge preferred against you?

A. No charge was ever preferred against me.

Q. You are a Harvard man, by the way, aren't you?

A. Yes, I am.

MR. FRAZER: Cross-examine.

MR. HAMILL: Have we a right to cross-examine him on the "Harvard man"?

THE COURT: I will be glad to have you and preside at the cross-examination.

MR. FRAZER: Cross-examine, Mr. Hamill.

MR. HAMILL: Joseph, I think you had better take charge of our friend.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Mr. Gilmartin, do you belong to any local, any union?

A. I belong to an organization which is called the Ministers' Union of America, which is affiliated neither with the American Federation of Labor nor the Committee for Industrial Organization.

Q. And why did you come to Jersey City on November 29th?

A. I came in my capacity as acting executive secretary for the Workers Defense League.

Q. Oh, you are acting executive secretary for the Workers Defense League?

A. I was at that time.

Q. Are you now?

A. I am not.

Q. And who asked you to come to Jersey City?

A. Nobody asked me to come.

Q. How did you know that they were going to distribute leaflets in Jersey City on November 29?

A. It was common knowledge in the newspaper that probably such a distribution would be attempted and I as part of my duties as acting executive secretary of the Workers Defense League came to Jersey City.

Q. Because of the fact that you read in the newspapers that someone was going to distribute circulars in Jersey City, on the morning of November 29, 1937, you came to Jersey City at six o'clock on that morning for the purpose of helping them distribute the circulars, is that right?

A. That is not exactly correct. I came because I had read of this distribution. I did not come knowing in advance that I would take part in the distribution. That de-

cision was made after I arrived and was at the office of the Shoe Workers Union.

Q. But you did take part in the distribution?

A. I did take part.

Q. And you knew at that time that there was an ordinance in effect in Jersey City?

A. I did.

Q. Prohibiting the distribution of leaflets and other literature?

A. I did.

Q. And knowing that, you came there for the purpose of distributing these leaflets?

A. As secretary——

MR. FRAZER: That isn't what he said. That is not the evidence. He said that he came there not knowing whether he would participate in the distribution or not.

MR. GLAVIN: All right. I will withdraw that question.

Q. You came there to give encouragement by your presence to those who were attempting to distribute leaflets?

A. I came as part of my duties as acting executive secretary of the Workers Defense League.

Q. Were you in sympathy with those who were distributing the leaflets?

A. I have no sympathy or antipathy to people who do those things which they believe are their rights. As acting secretary of this organization I am merely interested in protecting and defending the rights of workers and working class groups.

Q. Don't you go into the merits of whether or not they have the right to distribute leaflets before you lend your sympathy and aid to them?

A. I do.

Q. Did you in this case?

A. I did, and I believed that these people had a right to distribute circulars on the streets of Jersey City.

Q, And after you found out that they didn't have a right, by virtue of an ordinance in effect in Jersey City, prohibiting the distribution of leaflets, nevertheless you attempted to distribute them yourself, is that right?

A. That is right, because that is the only way we have been able to make such tests of these laws.

Q. And after you were stopped by someone whom you say was a plain clothes man, from distributing the leaflets, you asked to be arrested, is that right?

A. (No answer.)

THE COURT: Mr. Glavin, I don't want to again to be insistent about it, but I cannot understand your theory about this ordinance. It says no person shall distribute about any street. That, to my way of thinking, does not forbid your distributing from hand to hand.

MR. GLAVIN: Doesn't what? I didn't hear you.

THE COURT: Does not prevent your distributing from hand to hand. The ordinance, as I read it, clearly forbids littering of the streets.

MR. GLAVIN: Well, of course, our contention is that it does and the matter was tested in the courts of this state, and the courts have held that the ordinance was a reasonable exercise of the police power.

Now, of course, since the Griffin decision, we concede that the ordinance is not constitutional. This happened before the Griffin decision.

THE COURT: Was there a decision on it?

MR. FRAZER: There is no decision upon this section of the ordinance. There was a decision upon the second section.

MR. HAMILL: It was on the second section, but by implication the court has held the old ordinance good.

MR. FRAZER: Oh, that is a very different section. I think that section is probably good.

THE COURT: Might I have the citation of that case, Mr. Glavin? I won't bother you. Might I have the case?

MR. GLAVIN: I haven't got the citation.

THE COURT: Have you, anyone, got the citation?

MR. FRAZER: It is twelve, I don't know the name, but is 12 Miscellaneous, N. J. Miscellaneous; page 12.

THE COURT: 12 Miscellaneous?

MR. FRAZER: Page 12.

THE COURT: Will you get that? I think we have it somewhere.

MR. FRAZER: Let me have the opinion, Mr. Stoffer.

MR. STOFFER: Which one?

MR. FRAZER: In the certiorari. I can give it to your Honor in just a moment.

MR. STOFFER: Some copies are being made of it. Mr. Rothbard took it.

THE WITNESS: May I say——

THE COURT: I mean apart from the Griffin decision, which of course was not handed down at this time, I haven't been able to understand how the first section applies at all, and in the second place, how it could be tested otherwise than it was here tested.

MR. GLAVIN: Well, the ordinance, in the first section, says, "No person shall distribute or cause to be distributed or strewn about any street or public place any newspaper, pamphlet, circular," etc.

THE COURT: I don't believe anybody in the world would interpret that as anything but a littering of the street ordinance.

MR. GLAVIN: I can't agree with your Honor on that. The first part, the first section, "No person shall distribute or cause to be distributed or strewn about the streets"——

THE COURT: Then you have to say "about any street." If I were going to draft an ordinance, Mr. Glavin, which restricted distribution of pamphlets, I would say "on any street."

MR. GLAVIN: Of course,——

THE COURT: I don't want to argue too much about it.

MR. GLAVIN: This ordinance was drawn in 1924.

THE COURT: Yes. I think it is a proper police regulation ordinance about strewing the streets with waste paper.

MR. FRAZER: I think Section 2 is clearly good.

THE COURT: That is about households, isn't it?

MR. FRAZER: Yes, sir, ringing doorbells and things of that sort.

THE COURT: However, I don't want to limit your cross-examination, so go ahead.

MR. GLAVIN: Well, of course the direct examination is brought out by the complainants.

THE COURT: Nobody denies—at least, I consider it proved that these people went to Jersey City on this particular morning with the avowed and express purpose of testing both the applicability and the constitutionality of this ordinance.

Q. Well, Mr. Gilmartin, when you were stopped by a person whom you claim was a plain clothes man from distributing these leaflets, what did you do then?

A. Well, when I was stopped I was taken by this plain clothes man across the street, as I testified.

Q. And he said to you that you were under arrest?

A. For distributing circulars; that's correct.

Q. Yes. And subsequently he told you to move on, is that right?

A. That's essentially correct.

Q. And you insisted that you were arrested and you wanted to be taken to a police station?

A. I insisted that I had been told I was arrested and that I wanted to be taken to the police station, yes.

Q. And you actually did want to be taken to a police station, didn't you?

A. Yes; I believe in my right to be arrested if I violate a law.

Q. And you wanted to test that right, didn't you?

A. That is correct.

Q. And that was the reason why you came to Jersey City on that morning?

A. No, that isn't exactly correct. As I said before, I came because I knew from what I had read that such a distribution would probably take place. My participation was a decision of the morning itself.

Q. And after finding out subsequently that you were not under arrest, you went back to 76 Montgomery Street and procured some more of these leaflets for the purpose of going out and distributing those, isn't that right?

A. Well, I first returned to Bostwick Street and made another attempt at distributing leaflets before returning to 76 Montgomery Street.

Q. So in all you made how many attempts to distribute leaflets?

A. Three.

Q. Three attempts. And you did not succeed in any of those attempts in getting arrested?

A. I was told I was arrested but I was never booked or arraigned, to my knowledge. I was twice held in detention by people I assumed to be officers and plain clothes men.

Q. You only assumed that they were officers?

A. Well, they were plain clothes men.

Q. Well, how do you know they were plain clothes men?

A. Well, in one instance I saw his badge.

Q. In one instance. Do you know the number of the badge?

A. 134.

Q. 134?

A. No, I beg your pardon. The plain clothes man's badge was 102.

Q. 102. And did you see any other badges on any so-called plain clothes men?

A. No, no other plain clothes men that I asked to allow me to see their badges produced their badges.

Q. So that you don't know who they are, do you?

A. No, that is true.

MR. GLAVIN: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. You merely assumed they were plain clothes men on account of their association with other plain clothes men, is that right?

A. For that reason——

MR. GLAVIN: I object to what he assumed.

MR. HAMILL: I understood him to say he didn't know of them. His testimony is that he didn't know who they were, but he assumed they were plain clothes men, and merely called them such, but he doesn't know.

THE COURT: Well, as I understood him to say,—you were taken to the police station, weren't you?

THE WITNESS: I was taken to the police station by two of these men; in another instance one man told me that I was under arrest.

THE COURT: We are not in substantial disagreement about it. That's all, sir.

MR. FRAZER: Dr. Arons.

HARRY ARONS, called and sworn on behalf of the plaintiffs, testified as follows:

MR. HAMILL: May we have the name and address?

THE CLERK: Dr. Harry Arons.

MR. HAMILL: Did somebody say "Doctor"?

MR. FRAZER: That is right.

MR. HAMILL: Dr. Harry A-h-r-e-n-s?

THE WITNESS: A-r-o-n-s.

MR. HAMILL: A-r-o-n-s; and address, please.

MR. FRAZER: 717 High Street, Newark.

MR. HAMILL: 717 High Street, Newark. Thank you.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Doctor, you are a regularly licensed and practicing physician, are you?

A. I am.

Q. In this city?

A. State of New Jersey.

Q. And were you present on this occasion of the 29th of November, 1937?

A. I was.

Q. Will you tell me what your relation with it was, and what you saw.

A. I came into Jersey City with Mrs. Bell Rosenberg——

MR. HAMILL: Will you talk a little louder, Doctor, please?

A. (Continuing.) I came into Jersey City with Mrs. Bell Rosenberg in a car. We parked several blocks away from Montgomery Street and proceeded to walk to the Shoe Makers' headquarters at 76 Montgomery Street. When we

came in the vicinity of the headquarters we saw a group walking down the street, and we shouted to them, "Where are you going?" And someone in that group came back to us and said, "Where are you going?"

We said, "We are going to 76 Montgomery Street."

He says, "Follow me."

We asked him where he was taking us.

MR. GLAVIN: Of course, I object to this unless he can identify the person who he says spoke to him and asked him where they were going.

MR. FRAZER: He will, he will, he will.

MR. GLAVIN: Well, let him do it now.

THE WITNESS: All right.

MR. FRAZER: Let him tell his story, if you please, in an orderly way.

MR. GLAVIN: No, I object to his telling his story about some mythical person that told him to follow him, unless he can identify him.

MR. FRAZER: If the story is not connected up, it can be stricken out.

MR. GLAVIN: Well, I object to its being told and then stricken out.

THE COURT: Go ahead.

MR. GLAVIN: May I have an exception to your Honor's ruling?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. We asked him where he was taking us and he said, "You are going back to New York."

We asked him who he was and he said—he took out a wallet with a badge pinned to it and put it back into his pocket. Well, we told him we had our car—we were not from New York, we had our car parked back, and we would like to go back to our car. He says, "No, you are not." He says, "You are going back to New York."

And took us to the ferry, put us—took us to the ticket window. We paid our fare and went on to the ferry and went to New York.

Q. Who paid the fare?

A. We did. And——

THE COURT: Well, what sort of a badge was it?

THE WITNESS: I didn't look very closely. It was just a badge, and I was satisfied as long as he had a badge that he had some authority.

THE COURT: Do you always do what people with badges tell you?

THE WITNESS: Well, I didn't want to argue with the man. So after getting to New York we came back——

Q. Mrs. Rosenberg and you?

A. Well, this group; there were about five on the ferry. We came——

Q. Who else was in that group?

A. Well, all I know, Mrs. Rosenberg, myself, a Miss Bella Kussy—those are the only ones I recognized in this group; and we split up in New York and we came back by the Tubes, and I got off at Exchange Place. I walked out to the street and there I saw people distributing literature, and men in plain clothes and men in uniform pushing them around and taking the literature away from them, and leaflets away from them. After most of the leaflets were taken away, one of the men in plain clothes pushed some other—pushed some of the people who were distributing literature and said, "Get back to your headquarters."

MR. GLAVIN: I object to this, if your Honor please unless he identifies those people as police officers or as something. A man in plain clothes doesn't mean anything to me and I don't think it means anything to this court.

THE COURT: Yes, I agree. You must identify him.

THE WITNESS:: Well, he didn't wear any uniform.

Q. Were there any uniformed officers about the place at that time?

A. Oh, yes, quite a few.

Q. And what were they doing in relation to the plain clothes men that you speak of?

A. Well, they were taking literature away and looking on. The group that was distributing literature proceeded to the headquarters and I followed them across the street, and I went up to 76 Montgomery Street, the Shoe workers Local.

Q. Were you alone at that time?

A. Well, I was alone, yes. I went up there. After a discussion up there we came down again and we found the revolving door blocked, and I saw several people being taken out, put into cars, and I remained behind until there were no cars left, and one man frisked me and told me to get out and I went back to Newark.

Q. Now, did you say anything to the man who told you to go to New York, besides requesting to go back to your car?

A. No, that's all I told him.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You are an M.D., Doctor?

A. Yes, sir.

Q. And a graduate of what college?

A. University and Bellevue Hospital Medical College.

Q. University of what?

A. Bellevue Hospital Medical College. It is N. Y. U. at the present time.

Q. Do you practice in Newark?

A. Yes.

Q. How did you come to go to Jersey City on November 29th?

A. Well, I am a member of the Newark chapter of the Workers Defense League.

Q. Oh, you are a member of the Defense League also?

A. Yes. We held a meeting and we were told that——

Q. Will you talk a little louder, please.

A. We held a meeting and we were told that the CIO was attempting, was going to attempt to distribute literature on that day, and volunteers were asked to act as observers and I volunteered.

Q. Well, where was this meeting of the Workers Defense League held?

A. It was held in Miss Kussy's house on Nairn Place.

Q. And who was present?

A. Miss Kussy, myself, Mrs. Rosenberg and I think a man by the name of Harry Mindelin, and several others; I don't remember exactly.

Q. Were they all members of the Workers Defense League?

A. Yes.

Q. Was Mr. Clendennin there?

A. No, he wasn't there.

Q. And who told you that this distribution was going to go on, on that day?

A. Well, the secretary announced—it was a rather informal meeting and the secretary announced that this distribution going going on.

Q. Who was the secretary?

A. Miss Kussy.

Q. Is she the secretary of the Workers Defense League?

A. In Newark, yes.

Q. Oh, in Newark. Is that affiliated with the Workers Defense League of which Mr. Clendennin is the national executive secretary?

A. It is.

THE COURT: Treasurer, I think he said.

MR. GLAVIN: Or treasurer. I beg your pardon.

Q. So that you volunteered to go to Jersey City on that day?

A. Yes.

Q. For the purpose of observing or for the purpose of distributing circulars?

A. Observing.

Q. Observing. But you became a participant after you arrived there?

A. I did not.

Q. Didn't you try to distribute any circulars?

A. I did not.

Q. And after you got there and got out of your car, somebody came up to you and told you to keep going, is that right?

A. He told us to follow him.

Q. To follow him. You don't know who that was?

A. No. He just showed me a badge, that's all.

Q. And you don't know what kind of a badge?

A. No, I do not.

Q. And the person was not in a uniform?

A. No.

Q. You followed without objection?

A. Well, we told him we had the car parked back and if we were going out of Jersey City we would rather go back to Newark where we lived, in our car.

Q. Yes; but you were not forced to follow this person, were you?

A. Well, he tugged me under the arm. I didn't put up any resistance.

Q. And you went to the ferry with whoever had you under the arm and bought a ticket or tickets for New York, and yourself and Mrs. Rosenberg in company with others went to New York?

A. I just paid for myself.

Q. Oh, you just paid for yourself. And then you came back in the Tubes and arrived at Grove Street?

A. I think it was Exchange Place that I got off.

Q. Exchange Place. And why did you do that?

A. I went upstairs.

Q. Upstairs where?

A. To the street.

Q. Yes; and what did you do there?

A. I just watched, looked around, to see what was happening.

Q. And what happened?

A. Well, I saw several—I saw people trying to distribute literature——

Q. Did you recognize any of the people that you saw?

A. I saw Mrs. Milgram, I recognized her, and I think Mr. Milgram. I recognized him. But there were several others and I didn't—I don't recognize—I don't recognize who they were.

Q. Then you went back to 76 Montgomery Street?

A. Yes.

Q. And after waiting there you went back to Newark?

A. Well, we went downstairs and of course as Mr. Gilmartin has said, we were stopped in the lobby, and several other people in the lobby were escorted out into waiting cars, and I remained behind until there were no cars present, and——

Q. And then you went to Newark?

A. And I was searched and they told me to get out.

Q. Is it your custom, Doctor, to go around any place that you hear that they are going to distribute literature or circulars and observe?

A. No, it is not my custom.

Q. Is that the first time that you did it?

A. Yes, this is the first time.

Q. Did anyone in particular induce you to come to Jersey City on that day?

A. No, I went of my own free will.

Q. You went of your own free will.

MR. GLAVIN: That is all.

MR. FRAZER: That is all, Doctor. Miss Kussy.

THE COURT: Might I suggest, Mr. Frazer, that we have had enough of this observer testimony. If you have any more distributors, I should think they would be much more relevant to the issue.

MR. FRAZER: Well, there are certain features which I think have not been stressed, for which I was calling these witnesses, and that was the actual deportation.

THE COURT: Each observer has told exactly or substantially, at least, the same story as the ther observers.

MR. FRAZER: This is the first one, I think, if your Honor will recall, who was actually put upon a ferryboat and sent across.

MR. GLAVIN: Oh, I object to that statement. He was not put on a ferryboat. He bought a ticket and got on himself.

MR. FRAZER: He was taken by a policeman with a badge, under the arm, and taken up to the ferry to New York.

MR. GLAVIN: I object to Mr. Fraser, every time a witness testifies, commenting and putting his idea of what the witness testified to in the record.

MR. FRAZER: Well, if that is not the testimony, it is not binding on the Court in any way.

Under the circumstances I would like to call Miss Kussy.

THE COURT: All right.

BELLA KUSSY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. HAMILL: Name and address, please.

THE CLERK: Bella Kussy.
What is the address?

THE WITNESS: 30 Nairn Place, Newark.

THE CLERK: 30 Nairn Place, Newark.

Q. And Miss Kussy, you went over to Jersey City on the morning of November 29, 1937 and in whose company?

A. I went with Milton Arons, Jerry Ben Asher and Mrs. Helen Jungfer.

Q. And what time did you get over there?

A. We went by car from Newark and got into Jersey City about 7:10 or 7:15.

Q. And will you say what happened to you when you got there?

A. Well, as we passed the City Hall we noticed several cars in front, filled with plain clothes men——

MR. GLAVIN: I object to that and move that it be stricken out on the ground that she doesn't know what a plain clothes man is, and cannot identify them as plain clothes men or anything else.

THE WITNESS: Well——

MR. GLAVIN: Just a minute.

THE WITNESS: Oh.

THE COURT: Ask her what identification she has.

Q. How do you know they were plain clothes men?

A. Well, they looked like gangsters, but gangsters wouldn't be parked in front of the City Hall.

MR. GLAVIN: Perhaps they were members of the CIO, then.

THE COURT: That is not a sufficient identification.

A. (Continuing.) Well, cars filled with men who were looking out of the window, surveying the streets, and——

MR. GLAVIN: I move that her testimony be stricken.

THE COURT: I will strike it.

Q. Did you subsequently see these men?

A. Well, I couldn't identify them.

Q. All right.

A. But——

Q. What happened to you?

A. We parked the car several blocks away from 76 Montgomery Street, about a half a block into a side street. We got out and walked to Montgomery Street and started off in the direction of the union office, and when we had gone about half a block, two men came—one from each side of the street—and converged towards us and stopped us. One of them said, "I am a police officer"——

MR. GLAVIN: Just a minute. I object to what he said unless she identifies him.

MR. FRAZER: She is identifying him now.

MR. GLAVIN: Well, let her identify him first.

MR. FRAZER: She said, "I am a police officer."

MR. GLAVIN: She didn't say anything about a police officer.

THE COURT: I thought she did. Read it.

MR. FRAZER: I beg your pardon. You were talking so much you couldn't hear what she said.

THE COURT: Will you read it, please?

(Repeated by the reporter.)

THE COURT: All right.

A. (Continuing.) He asked us if we had business in Jersey City. Mr. Arons said, "Yes," we had. He asked us what business, Mr. Arons said, "We are going to a meeting." The man said, "What meeting?"

And Mr. Arons said: "CIO."

So the other man said, "Take them to the ferry."

They pointed in the other direction. We turned around, and the two men, the police officer and the other man, walked along with us. When we passed the street where we had come out, we saw Dr. Arons and Mrs. Rosenberg some distance behind us, and they followed us in the distance, and when the police officer saw them following us, he went back and walked with them, and escorted them after us. On the way to the ferry we were joined by Beatrice Fox who didn't know that we were being taken to the ferry, and wanted to go to the union office with us. All of us were taken to the ferry and compelled to pay our own fare and to get on the ferry. On the ferry we noticed a man who was watching us all the time and who did not get off at the other side, but stayed on the ferry and rode back to Jersey City.

MR. GLAVIN: I object to that on the ground it is immaterial and move it be stricken out.

THE COURT: Strike it.

MR. FRAZER: It is a statement of a fact.

MR. GLAVIN: There might have been a lot of people on the ferryboat that didn't get off.

MR. FRAZER: It is one which is subject to inference. I don't see that there is anything objectionable about it in any event. Maybe she saw a baby carriage on the boat. It is not objectionable.

MR. HAMILL: It might have been the young lady's beauty that caused the gentleman to look at her all the time.

A. (Continuing.) Well, he also went back to Jersey City. After we got off the ferry we decided to try to go back separately so we separated. Miss Fox and I went by Tubes and got off at Grove Street, and took a cab to the union office. We got into the union office without any difficulty, and the woman in charge told us that the distributors had gone out but would not permit us to go after them, since they did not want——

MR. GLAVIN: I object to what the woman told her about what had happened.

THE COURT: Just tell us what she did.

A. (Continuing.) Well, she kept us at the office until, in a few minutes, the distributors came back. A meeting was held in the office at which it was decided to go down and find out what had become of the people that had been taken away by police, and also to distribute more circulars, but when we got to the door it was blocked and finally the police were outside, finally one person at a time was searched, let out and put into the cars, but I was among the very last people to come out, and there were no more cars, so I was left standing on the sidewalk with Miss Fox and Mrs. Milgram. After everyone was gone we stood around, talked to reporters, and made a phone call, and then decided to go to the police headquarters and find out what had happened. When we got there we met Mr. Clendennin, Miss Cox and two or three other men, who told us they had not been able to find out what had happened, but Mrs. Milgram went in to inquire because her husband was among those missing, and she thought she might be informed on those grounds. Finally we were admitted to the court room, and I was present during the trial. After the trial I was also present when Mrs. Milgram was promised by a police officer that——

MR. GLAVIN: Just a minute. I object to what Mrs. Milgram was promised.

Q. By a police officer?

A. We were prevented from seeing the defendants on the grounds that they had been transferred to the County Jail, and we went to the County Jail and tried to see them there, and were told it was too late in the day. So we went back to Newark.

Q. Did you distribute any pamphlets yourself, any leaflets?

A. No, I didn't distribute them. I was an observer.

Q. Did you have any in your possession at any time?

A. No.

Q. Did you know the number of the policeman that escorted you?

A. No, I did not.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You didn't know that it was a policeman, did you?

A. Well, he told me he was. I had no further identification.

Q. You didn't ask him to see his badge?

A. No, I didn't.

Q. And you didn't see any badge on him?

A. I don't think I saw any badge.

Q. If anyone in this court room told you that he was a policeman would that satisfy you that he was a policeman?

A. No, I don't think so.

Q. Well, then, you didn't know whether this man who accosted you was a policeman or not, did you?

A. Well, I had no way of knowing, except that he identified himself as a policeman.

Q. And you were not searched at 76 Montgomery Street, were you?

A. No, but I saw all the people around me searched.

Q. Just answer the questions, please, don't volunteer.

A. I was not searched, myself.

Q. And you didn't attempt to distribute any circulars at all?

A. No.

Q. And you paid your own fare when you got on the ferry?

A. Yes. I didn't think it was wise to object——

Q. Never mind what you thought.

MR. GLAVIN: I move that that be stricken on the ground it is not responsive.

Q. You did pay your own fare?

A. Yes.

Q. And went to New York?

A. Yes.

Q. Because two persons who were dressed in plain clothes told you to follow them and their course led to the ferry?

A. They didn't tell me to follow them. One of them stood on each side of the group and they made plain that they were going to see to it that we got on the ferry.

MR. GLAVIN: Now, I object to that. I move that it be stricken, what they made plain.

Q. They suggested that you go to New York?

A. They instructed us to go to New York.

Q. And you went?

A. Yes.

Q. Now, are you connected with the Workers Defense League?

A. Yes, I am secretary of the Essex County branch.

Q. And how did you find out that the CIO or someone else was going to distribute circulars on November 29th in Jersey City?

A. Well, I had read about it in the newspapers and also a number of our members who came to the Workers Defense League meetings were members of the CIO.

Q. And who told you to go to Jersey City?

A. No one told me specifically, but our members who were CIO organizers told us that volunteers were invited, and we had a representative at the CIO meeting, which was informed of the distribution.

Q. Your organization then is connected with the CIO, isn't it?

A. No, it is not affiliated with the CIO.

Q. But your members are members of the CIO?

A. Not necessarily.

Q. But you have members of your organization who are members of the CIO, isn't that right?

A. Yes, we have some.

Q. Yes. And you decided that because you had read in the papers and because some of your members who were also CIO union men advised you that they were going to distribute leaflets in Jersey City on November 29th—is that right?

A. Yes.

Q. And did they tell you or did you know that there was an ordinance in effect in Jersey City prohibiting the distribution of circulars?

A. Yes, I think I did.

Q. You knew that. Nevertheless you decided to come and help and encourage by your presence the violation of that ordinance?

MR. FRAZER: I object. I object to the designation of her conduct.

THE COURT: I don't want to seem impatient but I must say I am getting a little tired of that questioning, Mr. Glavin.

MR. GLAVIN: Of course, the Court may be tired of it, but I am tired of a lot of questions that are being asked on direct examination, but there isn't anything I can do about it.

THE COURT: The reason I say I am tired of it, Mr. Glavin, is that the facts are all conceded. They went

there for the purpose of testing the ordinance. I just within ten minutes made that remark.

MR. GLAVIN: Well, of course, those observers didn't come for the purpose of testing the ordinance.

THE COURT: To observe the test.

MR. GLAVIN: They went for the purpose of encouraging those who were going to make the test.

THE COURT: To observe the test; to observe the test.

THE COURT: All right. That's all.

MR. FRAZER: That's all.

SOL CHERNOFSKY, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Where do you live, Mr. Chernofsky?

THE WITNESS: 184 Matthew Street, Orange.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your business, Mr. Chernofsky?

A. I am an organizer for the United Laundry Workers Organizing Committee.

Q. And a member of that union?

A Yes, sir.

Q. Were you over there on the 29th of November?

A Yes, sir.

Q. What happened to you or what did you see?

A. I drove into Jersey City with my car at about seven o'clock and parked my car directly in front of 78 Montgomery Street. A policeman was standing directly opposite 78 Montgomery Street, beside the building where the meeting was supposed to have taken place.

I went into that room, the meeting. There was a meeting in progress and by mutual consent it was decided to go

two by two down to the Harborside Building in order to try to distribute circulars.

We went down there in order to see if we could get some of our old workers in order to go to the various places in that area to circularize them.

Q. What happened?

A. When we got down as far as Exchange Place, which is at the site of the Harborside Building, a number of policemen, mingling with plain clothes men, pushed us toward the ferry. However, none of us who were in that crowd wanted to go to New York City.

MR. GLAVIN: I object. He does not know what any of them wanted to do.

Q. Did you want to go to New York City?

A. No, sir, I didn't want to go to New York City and I refused to go on the ferry. We mingled together, we were pushed as one solid group to the ferry. After some hesitation quite a number of policemen and plain clothes men came around and picked certain of the group out and put them under arrest. I was one of those arrested. I asked the officer, who was a plain clothes man—I didn't see his badge——

MR. GLAVIN: I object. Will Mr. Frazer ask him if he can identify him as a police officer or anything else?

Q. What did he do to you?

MR. GLAVIN: I object to what he did to him or what he said to him unless he can identify him as something.

MR. FRAZER: This seems to me to be quite ridiculous.

MR. GLAVIN: It has been ridiculous all along.

MR. FRAZER: A group of men mingling with police officers and joining in their operations, to say that because they appear to be in plain clothes, what hap-

pened in a melee of that kind cannot be told by a witness.

MR. GLAVIN: It certainly cannot bind these defendants, what somebody in plain clothes did at a scene where there were probably one hundred people, if he cannot identify them.

THE COURT: I think this is getting a little unreal, Mr. Glavin. Nobody denies that the police at that particular point and on this particular day prevented the distribution of these pamphlets.

MR. GLAVIN: Nobody has admitted it either, if your Honor please.

THE COURT: But it is not denied.

MR. GLAVIN: We have not been called upon to admit it yet.

THE COURT: There is some evidence to that effect, and no evidence to the contrary.

MR. GLAVIN: We have not had a chance to put it in yet.

THE COURT: I will ask you flatly, do you deny it?

MR. GLAVIN: I don't know whether we deny it or not. We are here to meet the testimony that is produced on behalf of the complainant. And that we intend to do at the proper time.

THE COURT: I have always understood that the Court was entitled to ask counsel whether they deny the facts or not. If you do not care to answer it——

MR. GLAVIN: The police attempted to enforce the ordinance, according to their lights, the way the ordinance should be enforced.

THE COURT: I am not expressing any opinion, Mr. Glavin. All I am asking you is whether you deny this fact.

MR. GLAVIN: I certainly deny a lot of facts that were testified to here.

THE COURT: But the fact that they prevented the distribution of handbills.

MR. GLAVIN: I don't know that that will be denied, but nevertheless I do not think that it is proper for this witness, as a lot of other witnesses have done, to testify that someone in plain clothes, whom they cannot identify either as police officers or by name or anything else, did certain things to them. How can that possibly bind the defendants in this case?

THE COURT: Frankly speaking, Mr. Glavin, it does not particularly interest me, the fact being that the police held certain defendants in court and whether there was a record made of their arrest for distributing these handbills, I do not know——

MR. FRAZER: This is one of the actual men who was arrested and held for the Grand Jury.

THE COURT: Let's go to that then.

Q. Go ahead, what happened

A. Well, this particular officer—one particular officer in plain clothes arrested me and he took me to a car, a coach, where two others beside myself were placed in that car. I had asked the officer why he was arresting me and he told me for distributing circulars. I told him I had not distributed one circular, although I did have circulars in my hand.

We were brought to a precinct and we were placed in a room. We were in that room from seven-thirty to about twelve forty-five. We had continuously asked to have some lunch. We were denied. Finally at twelve forty-five we were taken into the court room. Shall I proceed?

MR. FRAZER: Yes.

THE COURT: Was he one of the five defendants?

THE WITNESS: No.

MR. FRAZER: No.

THE COURT: What was his status?

MR. FRAZER: He is one of the group that was held for the Grand Jury for unlawful assembly, I think. We have no transcript.

MR. GLAVIN: That, of course, is a matter of record.

THE COURT: I don't know whether it is or not. We have had difficulty with the record. Is that a matter of record?

MR. GLAVIN: The fact that they were held for the Grand Jury is certainly a matter of record in the court that they were held in, and the court that they were held for.

THE COURT: You ought to produce the record.

MR. HAMILL: The papers were sent to the Grand Jury.

THE COURT: They are available somewhere.

MR. HAMILL: Oh, yes. I imagine you can get them from the Prosecutor's office.

MR. FRAZER: Would you like to bring over from Hudson County for me?

MR. HAMILL: You have asked me to do a lot of things and I want to be complaisant, and even obliging, but don't put any more on me than you think you ought to.

Q. Well, you were arrested and taken to jail. Were any charges preferred against you?

A. There was a—Well I had asked the officer what charge.

MR. GLAVIN: I object. If he knows the charge made against him, he ought to state it.

Q. You asked the officer whether you were—what you were arrested for?

A. Yes, sir.

Q. What did he say?

A. Distributing literature.

Q. Yes.

A. Then when we got to court room we found that we were arrested for unlawful assemblage, that is, the seven of us who were placed in that particular vicinity, under arrest.

Q. What did you do then, you?

A. Well the group of us, we were held for one thousand dollars bail. During the court procedure I believe somebody told the four—if you wish me to continue about the court procedure?

Q. No. Who were the other persons who were held with you, do you know?

A. Samuel Macri, Morris Milgram, Walter Barry and three others, I don't know the other's names.

Q. Did you actually post bail?

MR. GLAVIN: I object, immaterial, whether he actually posted bail or not.

THE COURT: What does the record show about that? Did you ever go to jail?

THE WITNESS: I did, for one day. During the particular period our attorney—during the trial period our attorney——

MR. GLAVIN: I object to what his attorney was doing during the trial period.

THE COURT: Sustained.

A. Well, we were taken to the county jail.

MR. GLAVIN: May I object to this witness just going on rambling. If Mr. Frazer wants to ask him questions let him ask them.

MR. FRAZER: I have asked him what he did and counsel is continuously interrupting him.

MR. GLAVIN: But I object to his testifying to what went on in a police court——

THE COURT: I have not allowed him to testify to what happened to the others. What happened to you personally?

A. Well, I was held for one thousand dollars bail. I was taken up to the headquarters where I was fingerprinted, my picture taken and then we were taken to the county jail and at the county jail——

MR. GLAVIN: I object on the ground it is immaterial what happened in the county jail. The only thing that is material is the fact that he was arrested.

THE COURT: Then were you released on bail?

THE WITNESS: I was released on bail the very next morning.

THE COURT: What happened to your case?

THE WITNESS: The case still is pending in the Grand Jury.

Q. What happened to your car which you left in front of 78 Montgomery Street?

A. I had continuously told the policeman who had arrested me and was there at the jail that——

MR. GLAVIN: I object.

THE COURT: Please don't say what you told him. You were asked by your counsel what happened to your car.

A. Well, my car was parked in front of 78 Montgomery Street. When I finally went to recover it it was found at 88 Montgomery beside a fire hydrant with a ticket on it with the following charges——

MR. GLAVIN: I object to this testimony on the ground that it has nothing to do with these witnesses.

MR. FRAZER: Oh, yes, it is part of the——

MR. GLAVIN: May I not make my objection without interruption? On the ground that it has nothing to do with the defendants, it is not binding upon them, what happened to his car. He was not in his car when he was apprehended, and unless he can prove that one of these defendants moved his car or did something else with it, it is not material in this case.

THE COURT: Who made the charges on the car against you, do you know that?

THE WITNESS: I don't think so, I didn't look at the ticket very carefully.

Q. You didn't look at the ticket?

A. I looked at the ticket, yes, Judge, but not at the officer's name.

THE COURT: What happened to the charge?

THE WITNESS: I paid the fine.

THE COURT: Where?

THE WITNESS: At the police court in Jersey City.

THE COURT: Who was the complaining witness?

THE WITNESS: There wasn't any.

THE COURT: Did you protest against paying the fine?

THE WITNESS: I did not. I thought it was best to just pay the fine.

Q. What were you charged with?

MR. GLAVIN: I object to it on the ground it has nothing to do with this case.

THE COURT: Mr. Frazer, you might infer that. was moved by the police, but after all inferences a not good evidence. I will strike the evidence out.

MR. FRAZER: May I say to your Honor, before stri ing the testimony out, an inference is something whi may be drawn——

THE COURT: Mr. Frazer, we have to be bound b the rules of evidence.

MR. FRAZER: I would like to ask one question this witness as to whether he informed, when he w taken into custody, the police officer, who took him in custody, that his car was there.

MR. GLAVIN: I object on the ground it is imm terial what he informed them.

THE COURT: He said he didn't protest the movi of his car, therefore we are lacking in proof. He pa his fine and that is all there is to it.

MR. FRAZER: Exception.

THE COURT: You may have it.

(Which exception was duly allowed and sealed a cordingly.)

(Seale

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Mr. Chernofsky, you are an organizer for the Unit Laundry Workers Union?

A. Organizing committee.

Q. Organizing committeeman?

A. No. Committee.

Q. And is that an affiliate of the CIO?

A. An affiliate of the Amalgamated Clothing Worke of America, which is affiliated with the CIO.

Q. Where is the office of the United Laundry Workers Union located?

A. 172 Broad Street, Newark.

Q. Is there a local located in Jersey City?

A. At the present time we have space there, office space. There is no local established in Jersey City.

Q. Was there one on November 29, 1937?

A. There was not.

Q. How did you learn of the fact that leaflets were going to be distributed in Jersey City on November 29th?

A. Other organizers had told me about the distribution.

Q. Who were the other organizers that told you about the distribution?

A. That I cannot recall.

Q. You do not recall who they were?

A. No, sir.

Q. You do not recall any of them?

A. I do not.

Q. And how did you come to decide to come to Jersey City?

A. Well, I am interested in laundry workers, no matter what part of the state they are in. It is a duty of mine to try to organize laundry workers. We have organized quite a few in Jersey City.

Q. But there were not any laundry workers interested in this movement, were there, Mr. Chernofsky?

A. I happen to be a laundry worker.

Q. Do you know whether there were any laundry workers in Jersey City that were interested in this movement on the part of the CIO to distribute literature in Jersey City?

A. They themselves——

Q. Now, just a minute, will you answer the question without a speech? Just say yes or no.

A. Will you ask me the question again?

MR. GLAVIN: Will the stenographer repeat the question?

(Repeated by stenographer.)

A. We have some members in Jersey City who are interested in the distribution of literature, yes.

Q. Who are they?

MR. FRAZER: Oh, I object to that.

THE COURT: How many laundries are there in Jersey City?

THE WITNESS: There are approximately about eighteen.

THE COURT: How many people do they employ?

THE WITNESS: They employ about 12,500 workers.

THE COURT: Are any of them members of any union?

THE WITNESS: There is one laundry in Jersey City who had a union contract with the American Federation of Labor.

THE COURT: What laundry was that?

THE WITNESS: I think it was the Sunshine Laundry.

THE COURT: They have a local, is that it?

THE WITNESS: They have their own local, yes, sir.

THE COURT: And are the other laundries unorganized?

THE WITNESS: Yes, sir, excepting for company unions.

Q. Did any laundry or any laundry worker in particular in Jersey City request you to come to Jersey City on November 29th?

A. Not the workers in Jersey City requested me, but my particular union members did.

Q. And you came over in an automobile, is that right?

A. That is correct.

Q. And you arrived at 76 Montgomery Street about what time?

A. Seven A. M.

Q. Six o'clock in the morning?

A. Yes.

Q. And you went to a meeting at 76 Montgomery Street?

A. That is correct.

Q. And was that a meeting of the United Laundry Workers Union?

A. No, it was a meeting of the various organizers and sympathizers with the CIO cause.

Q. And from there you left with the intention of marching two by two, down Montgomery Street to the Harborside Warehouse?

A. That is right.

Q. Are there any laundries located at the Harborside Warehouse, to your knowledge?

A. No, sir, there is not.

Q. And from there what happened to you when you got down to the Harborside Warehouse?

A. When we got down to the Harborside Warehouse——

Q. When you got there.

A. We had nothing else to do but——

Q. Just a minute, not what you had to do, what you did.

A. We did nothing because we were forced to do it——

MR. GLAVIN: I move to strike it out on the ground it is not responsive.

Q. What did you do?

A. Well we——

Q. Use the first person, please.

A. Why, we got down with some other organizers for the purpose of—from there we went to——

Q. Did you hear the question?

A. I certainly did.

Q. I say what did you do when you got to the Harborside Warehouse?

A. Well, we just stayed there.

Q. You just stayed there?

A. That is right.

Q. And after staying there what did you do then?

A. Well, in company with the policemen I went to the precinct where I was arrested.

Q. Well, did you distribute any literature?

A. No, yes.

Q. Did you have any with you?

A. Yes, sir.

Q. Did you attempt to distribute them?

A. Well I would have attempted——

Q. I didn't ask you that. Did you attempt to distribute any literature?

A. It was too early in the morning, there were not very many people around.

Q. Mr. Chernofsky, that question calls for a yes or no answer. Did you attempt to distribute any literature?

A. Yes.

Q. All right. And how many people were with you, in your immediate company, when you were arrested?

A. There was approximately in the crowd about forty-five or fifty.

Q. About forty-five. Then you were taken—after you were arrested and arraigned and held for the Grand Jury, you were taken to the county jail, is that right?

A. That is correct.

Q. And you remained there for one day?

A. That is right.

Q. Then you went back to Orange?

A. I went back to get my car.

Q. You went back to get your car and you went back to Orange?

A. That is right.

MR. GLAVIN: That is all.

THE COURT: While you are waiting, Mr. Frazer, I will ask the witness a question: did you attempt, or have you at any time attempted to distribute literature to laundry workers in Jersey City?

THE WITNESS: Yes, sir, I did.

THE COURT: When was that?

THE WITNESS: I attempted to distribute literature in front of the Lackawanna Laundry in Jersey City about three weeks previous to the general distribution that we tried.

THE COURT: Have you got a copy of the literature you attempted to distribute there?

THE WITNESS: I think I have.

THE COURT: Will you produce it?

THE WITNESS: I will bring copies. We have them on file.

THE COURT: What happened then?

THE WITNESS: Well there was——

MR. GLAVIN: As Mr. Hamill said this morning, your Honor, we do not question the Judge's right to ask questions——

THE COURT: You have a right to take exception. I disagree with Mr. Hamill. You have a perfect right to question my questioning, Mr. Glavin.

MR. GLAVIN: I don't think that this is material, and I think that it should not be in the record.

THE COURT: I should not have asked it so broadly.

MR. GLAVIN: There is not any allegation in the bill of complaint that it is in support of and certainly

nothing has been produced by the complainants with respect to any distribution other than on November 29th.

THE COURT: Is that correct? I don't question your word, Mr. Glavin.

MR. FRAZER: Well, of course, we do allege interference with labor activities. That is a perfectly good allegation under which the Judge's question could be supported.

THE COURT: My question was too broad. Was there any interference with your activity?

THE WITNESS: At that time no, none whatever.

MR. GLAVIN: I withdraw my objection, if the Court please.

MR. FRAZER: That is all, Mr. Chernofsky.

(Witness excused.)

MORRIS MILGRAM, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. What is your address?

A. 138 Baldwin Avenue, Jersey City.

Q. What is your business, Mr. Milgram?

A. I am secretary of the Workers Defense League of New Jersey.

Q. Did you have occasion to be in Jersey City around 76 Montgomery Street on the morning of the 29th of November?

A. I had.

Q. What happened to you, what did you see?

THE COURT: Is he one of the defendants in this case of the circulars?

THE WITNESS: I am.

THE COURT: Then do we need anything more than that fact?

THE WITNESS: I was one of those held for the Grand Jury.

MR. FRAZER: He is held for the Grand Jury on the charge of unlawful assembly.

Q. Is that it, Mr. Milgram?
A. That is right.

MR. FRAZER: Now I would like to show what happened to him, in the line of attack by officers.

THE COURT: Well, briefly.

MR. GLAVIN: Do I understand Mr. Milgram is supposed to be one of the plaintiffs in this case?

MR. FRAZER: No, one of the defendants on the charge made, and held for the Grand Jury.

Q. State briefly what happened to you, Mr. Milgram.
A. Well, I walked with a group of about forty people to the Harborside Building and distributed leaflets. I was walking with my wife. An officer came up to her some time after Mr. Barry, Mr. Macri and Mr. McGinn had been arrested and the officer took her by the arm and started to walk away with her when a gentleman, not in uniform, ordered the officer——

MR. GLAVIN: I object, immaterial, what a gentleman not in uniform did.

THE COURT: Did the officer obey the order?

THE WITNESS: The officer obeyed the order, yes. He told the officer, "I don't want the girl, I want the man."

MR. GLAVIN: I object what he told the officer and move to strike it out.

THE COURT: What did the officer do?

THE WITNESS: The officer let go of my wife and he and another officer took hold of me, and the second officer, whose badge number was 82, walked with me to a car parked nearby and with several other people I was taken to the police station. During the course of the proceeding before Judge Botti——

MR. GLAVIN: I object to what happened before Judge Botti.

THE COURT: Yes, sustain the objection.

MR. FRAZER: He is not testifying to what happened as part of the court proceeding——

THE COURT: No, I wanted to testify to something that was outside of the legal court procedure that occurred.

MR. FRAZER: If I ask him the question you will say I am leading him; I am asking him to tell the story.

MR. HAMILL: If you put the question "what happened," I won't object.

Q. Will you proceed?

A. Yes. I was standing right in front of Judge Botti's desk, taking notes of the proceeding, because I had heard that no official stenographic record was being permitted——

MR. GLAVIN: I object, hearsay, what he heard.

THE WITNESS (Continuing.): Whereupon a police officer came up to me and attempted—and took my note-book. The attorney, Mr. Kopelsohn pointed this out to the Court and I was permitted to continue taking notes.

After the proceedings before Judge Botti ended all the defendants were taken inside and their property was taken from them.

MR. GLAVIN: I object unless he was there and saw it.

MR. FRAZER: He was one of the defendants.

THE WITNESS: My property was taken from me——

MR. GLAVIN: Just a minute.

THE COURT: He is only talking about himself now.

MR. GLAVIN: He said all the defendants, and that their property was taken from them.

THE COURT: He is only telling what happened to him.

THE WITNESS: My property was taken from me, including my note-book, which had my notes in it, and a person who was addressed as sergeant by the Court and who had badge number 16 then seized my note-book and tore out of it all the pages that had writing. I demanded that they be returned and I called to officer number 82 who was standing nearby, to witness what I termed the theft of my property, and he would not do anything. All my protestations did not succeed in getting back those pages and when my property was put into an envelope to be sealed, those pages were not inserted in the envelope. They remained in the possession of officer number 16.

Q. Were they returned to you when your property eventually was given back to you?

A. They were not returned to me and I made a note of that on the envelope which I had to sign to get my property back.

Q. How long were you in jail?

A. I was in jail until about noon of the day following the arrest.

Q. And you were arrested at what time?

A. About seven thirty a. m. on November 29th.

Q. Now, did you have any other experience, or do you recall the occasion when Mr. Norman Thomas came to Jersey City to speak?

A. Yes, I do.

Q. Were you present at Journal Square on that evening?

A. Yes, I was.

MR. GLAVIN: I object to any testimony concerning anything that happened subsequent to the filing of this bill, on the ground that it is not within the four corners of the bill and is certainly not part of the proof in this case.

THE COURT: I have permitted the amendment.

MR. GLAVIN: Then I plead surprise and ask for time to answer any allegations that may be added to the bill.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Will you say what happened to you that night, what you saw and what happened to you?

A. As Mr. Barry, Norman Thomas and others drove into Journal Square I was on the edge of a crowd assembled on Journal Square in front of the telegraph office. I tried to clear some space so that the car could drive in and I walked rapidly with the crowd as the crowd shouted: "Hurrah for Norman Thomas" when he drove into the Square. I was struck on the side of my eye, my glasses were——

MR. GLAVIN: I object unless he can identify who struck him.

THE WITNESS: I can identify the person.

Q. Who struck you?

A. I was struck by officer number 191.

Q. What was the blow he gave you?

A. It was a blow of his fist that threw my glasses to the ground and broke them and left a scar that I still bear

beneath my eye. I fell to the ground dazed and as I tried to get up I was struck on the back of my head with a club, wielded by the officer.

MR. GLAVIN: The same officer?

THE WITNESS: It was officer number 191. Then I got up and saw Norman Thomas being pushed into a car about fifteen or twenty feet away and driven off.

Q. By policemen? Who was putting him in?

A. There were numerous policemen as well as men in plain clothes all around holding him. I got up and I walked with the crowd going to the police station.

Q. What was the date of this meeting?

A. April 30, 1938.

Q. And had you read the Griffin decision, the United States Supreme Court?

MR. GLAVIN: I object, unless he is a lawyer. What difference does it make?

THE COURT: Sustain the objection.

MR. FRAZER: I wish to show that this was an operation which occurred after the Griffin decision when the United States Supreme Court said the distribution of pamphlets was proper. I am about to come to the point that he was attempting, that evening, to distribute pamphlets.

Q. Is that a fact?

A. That is a fact.

MR. GLAVIN: Are you going to tell him what he was doing?

THE COURT: Yes, I think you ought to ask the question first.

MR. GLAVIN: I move to strike what happened to him.

THE COURT: What pamphlets were you distributing that night?

THE WITNESS: That night as I was—I had some pamphlets in my pocket and as I recall it they were of various kinds.

THE COURT: Did you try to distribute them?

THE WITNESS: Yes, I distributed a few.

Q. Then what happened to you?

A. On that occasion I was prevented by a police officer whose name I do not recall, I have it written down at home. He took me over to another officer asking whether he should hold me and the other officer told him to release me. I then went to my house and later that evening——

Q. Did they take the pamphlets from you or did they leave them with you?

A. He left them with me, but only after I argued with him and told him about the Griffin decision. I was well acquainted with the Griffin decision because my organization had——

MR. GLAVIN: I object to the legal interpretation of the Griffin decision by this man or his organization.

THE COURT: Yes.

THE WITNESS: That evening I went again to Journal Square with Darrell O'Neil, the Hudson County secretary of the Workers Defense Union, and I was carrying my brief case and he was carrying leaflets. Those leaflets were distributed by him for about a moment at Journal Square and they were seized by police officers and he secured a few more leaflets from me and continued to distribute them, and at that time several police officers and men in plain clothes who worked in co-ordination with these police officers emptied my brief case.

MR. GLAVIN: I object to any testimony concerning men in plain clothes.

THE COURT: Yes, you will have to identify them.

A. These men, as well as police officers in uniform, emptied my brief case and they threw Darrell O'Neil and myself into a police car and threw into the car on top of us two young ladies that were passing by.

Q. Had they been distributing circulars, too?

A. They had not. We were driven away with four other men in the car, and of those four two were in uniform and two were not. The policeman who was driving the car would not tell us where we were being taken. I claimed we were being kidnapped if we were not being told where we were being taken.

MR. GLAVIN: I object to what he claimed.

MR. FRAZER: This is all part of the picture.

THE COURT: Yes.

A. (Continuing) One of the men who did not wear a uniform and who is unknown to me, attempted to strike me in the jaw——

MR. GLAVIN: I object to what the man who did not wear a uniform and who was unknown to him did.

MR. FRAZER: He was with officer's uniform, obviously operating together.

THE COURT: Were you in the car with the other men?

THE WITNESS: One of the evidences that this was a police car was that right back of me, in easy reach of us, was a policeman's billy. That had been left right near the back window. I took the badge from one of the police officers—there were two in uniform. One of them did not wear a badge that had any number on it. I have that number and I can produce it. I did not bring it here because I didn't think I would be questioned on this matter today. And we were driven to the Communipaw Avenue station of the Central Railroad of New Jersey and there I got ready to leave the car and was forcibly kept in the car.

Several times fists were waved in my face because I tried to open the door. And a crowd collected and I shouted to the crowd, telling them what was going on and asking them to be witnesses.

MR. GLAVIN: I object to what he stated to the crowd.

MR. FRAZER: It is all part of the picture.

A. (Continuing.) The crowd grew to about thirty people and a ferry came in and all this time, for about twenty minutes, there were about four of us being held in the car. The four were: myself and Darrell O'Neil, the two girls, Clara Handleman, of Newark, and Beatrice Fox, of Newark. And we were all held until the ferry was about to pull out, at which time we were forced onto the ferry. I refused to go, and with the aid of a uniformed policeman and a man without uniform I was pushed, shoved and shoved onto the ferry. I attempted several times to get off the ferry and the officer in uniform kept me on there and finally the ferry left.

By the way, we were not asked to pay any fare on the ferry.

Q. This was the same evening Norman Thomas was at Jersey City?

A. Yes. I inquired among the workers on the ferry boat as to whether Norman Thomas——

MR. GLAVIN: I object to what he inquired among the workers.

THE COURT: Yes.

Q. And you, I understand, are a resident of Jersey City is that right?

A. I am.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. How long have you been a resident of Jersey City?

A. About four and one-half months.

Q. You were not a resident of Jersey City on November 29th, were you?

A. I was not.

Q. Where were you a resident of then?

A. I was a resident of New York City, I lived at 1325 Union Street.

Q. You are connected with the New Jersey Workers Defense League?

A. Yes.

Q. And do you hold any office in that organization?

A. I am state secretary of the organization.

Q. Is that a branch of the International Defense, or in any way affiliated with it?

A. I know of no organization known as the International Defense. We are affiliated with the Workers Defense League with national offices at 112 19th Street.

Q. International Labor Defense?

A. We have no connection whatever with the International Labor Defense.

Q. And why did you come to Jersey City on November 29th?

A. I came to Jersey City because as a member of the Workers Defense League I felt it was my duty to help obtain the right of workers to distribute leaflets in Jersey City and in any other part of the United States.

Q. How did you find out they were going to distribute leaflets in Jersey City?

A. Another members of the Workers Defense League, Harold Diamond, told me so.

Q. When did he tell you so?

A. Several days before November 29th.

Q. Do you work, other than in your capacity as secretary of the New Jersey Workers Defense League?

A. At the time I was a student at the University of Newark.

Q. The University of Newark?

A. Yes.

Q. Although you lived in New York you were nevertheless secretary of the New Jersey Workers Defense League?

A. I was not secretary of the Workers Defense League at the time.

Q. When did you become secretary of the Workers Defense League?

A. About the middle of December.

Q. Was it because of your activities on November 29th that you were rewarded with that distinction?

MR. FRAZER: I object, not being cross-examination of any kind.

Q. So that you attempted to distribute literature on November 29th?

A. I did.

Q. And you were stopped?

A. I was stopped.

Q. And you came here for that purpose, to distribute literature on that date, is that correct?

A. That is correct.

Q. Did you know that there was an ordinance in effect in Jersey City barring the distribution of leaflets at the time?

A. I knew there was an ordinance but I did not believe it was in effect because the Constitution of the United States clearly declares, in its bill of rights, that there shall be no infringement of the right of free speech or free press.

Q. You took it upon yourself to interpret the United States Constitution in connection with this particular ordinance and you judicially decided that it was unconstitutional, is that right?

MR. FRAZER: I object to the queston.

Q. You came to the conclusion that it was unconstitutional?

A. Yes, also because I had heard in a previous case that had been th. decision.

Q. You do no. remember the case, do you?

A. No, not being an attorney, I didn't take note of the case.

MR. FRAZER: Do you remember the prosecutor in the case?

THE WITNESS: I do not.

Q. What caused you to move to Jersey City? Do you like Jersey City?

MR. FRAZER: I object. He has that personal right.

MR. GLAVIN: I have a right to test his credibility.

THE COURT: I will allow it.

Q. Do you work in Jersey City?

A. A good deal of my time is spent in Jersey City. As state secretary of the Workers Defense League.

Q. Is that your employment?

A. It is not a paying job.

Q. What do you do for a living?

A. At the present time I am unemployed.

Q. So you have plenty of time to go to all these meetings. And who did you say arrested you?

A. I was arrested by Officer No. 82.

Q. No. 82. Can you describe Officer No. 82?

A. Not very well because there were many officers with him. I came in contact and I took down his number, and that is my principal means of identification.

Q. You came in contact with him two or three times, didn't you?

A. That is correct. I think I could describe him roughly, but I would not be as sure of him as I am of the number.

Q. Let's hear how roughly you can describe him.

A. Pardon me?

Q. Let's hear how roughly you can describe him.

A. He was dressed as an officer, dressed in uniform, that is typical of the Jersey City officers. He was approximately five feet ten inches tall and of heavy build. I don't recall any further details. I made no attempt to study his features.

Q. Did he have any physical characteristics that might have impressed themselves upon your memory?

A. None.

Q. Then you came in contact with a sergeant or a lieutenant. Do you know his badge number?

A. The sergeant's number was 16.

Q. Can you describe him?

A. Even less than Officer No. 82, because I met Sergeant No. 16 but once, and as I said, I look at his badge number only.

Q. When you attempted to take notes in the First Criminal Court of Jersey City, you were a prisoner, weren't you?

A. I was.

Q. And you were told not to take notes by someone in authority there?

A. That happened, but Judge Botti granted my right to take notes.

MR. GLAVIN: That is all.

(Witness excused.)

GRACE MILGRAM, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. You were present in Jersey City on November 29th too, weren't you?

A. Yes.

Q. And were you arrested or anything like that?

A. An officer placed me under arrest but then let me go.

Q. And did he exchange you for anyone?

A. A man came up to him in plain clothes and——

MR. GLAVIN: I object to what a man in plain clothes did.

THE COURT: She says that as a fact, not what somebody else said.

A. Yes. He let me go and took my husband.

Q. The officer did?

A. Yes.

Q. In compliance with an order by somebody?

A. Yes.

MR. HAMILL: I object.

MR. GLAVIN: I object.

Q. What did you do the rest of that day?

A. Well, after my husband had been arrested my leaflets were taken away and I saw a few leaflets scattered on the ground. I started to pick them up and another officer came up and took them out of my hand and crumpled them up.

After that I went back to the meeting place, 76 Montgomery Street, and attended a meeting there. When we came downstairs we were blocked by the officers and after waiting about ten minutes people were allowed to file out one by one and placed in cars as the other witnesses have

described. My leaflets were taken away from me as I went through the door. I had some under my coat. The officer asked me if I had any others and I didn't answer him. He didn't search me. Then I went into the courtroom and asked the man in charge on the desk there whether my husband was arrested and he said he was, and I went in and sat at the trial. After the trial was over I went up and try to see my husband and they would not allow me, they said he was down being fingerprinted, and then they said he was in the county jail. When I went over there they would not let me see him and we left money for him and went home.

MR. GLAVIN: I cannot hear that.

THE COURT: Money for bail?

THE WITNESS: No, just for cigarettes.

Q. Did you on any other occasion attempt to distribute pamphlets?

A. Yes, after the Supreme Court decision was announced I went out——

MR. GLAVIN: I object on the ground that this is subsequent to the filing of the bill of complaint in this case and does not come within the four corners of the bill of complaint. There is no allegation which it can support and it has no part in this case.

THE COURT: I will allow it under the amendment.

MR. GLAVIN: I plead surprise and ask your Honor for an adjournment in order that we may be able to meet it.

THE COURT: It is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. I show you a pamphlet or a sheet and ask you whether you have seen that before and if you have ever attempted to distribute those.

A. Yes, I did.

MR. FRAZER: I would like to offer that in evidence.

MR. GLAVIN: If that is one of the leaflets she tried to distribute I have no objection.

(Received and marked Exhibit P-4.)

Q. When was it you were distributing those leaflets?

A. This particular leaflet, on Thursday after the Supreme Court decision.

Q. And what happened in your effort to distribute them?

A. Police Officer No. 1095 came up to me and took them away. I protested that it was my property and he had no right to take them. He said if I wanted them I could go back to the police station and get them. I asked him why he was taking them away and he said it is a violation of the city ordinance. I said, "If I am violating——"

MR. GLAVIN: I object to what she said to the officer.

MR. FRAZER: I think it is part of the picture or part of the res gestae of this case.

THE COURT: Tell us what happened.

THE WITNESS: Well, I asked him to put me under arrest and he refused.

MR. GLAVIN: I object to what she asked him.

THE COURT: He just took the leaflets and you were not arrested?

THE WITNESS: Yes, sir. I tried on several occasions thereafter, I kept going back for more leaflets and they kept taking them away.

THE COURT: Can I see those leaflets?

MR. FRAZER: I will read it if I may.

MR. GLAVIN: I object to its being read into the record. It is a matter of evidence.

MR. FRAZER: It is in evidence.

MR. HAMILL: Another thing, if your Honor please, certain circulars have been offered in evidence as having been distributed or attempted to be distributed. I do not understand that the contents of those go in evidence but they only go in evidence for the purpose of showing that a certain leaflet—and the only purpose of the contents serve are for identification. You don't intend to put in, by means of a circular that they sought to distribute, evidence that you would have to put in by way of witnesses?

MR. FRAZER: No, not at all, but I do intend to put in by way of evidence that the circular itself, as a bit of real evidence, the fact that there is nothing of a nature to foment rebellion or promote disorderly conduct in this circular. I think the circular speaks for itself.

MR. HAMILL: In order that we may understand each other, you do not mean that the mere putting in of this circular proves, or is evidence of the truth or veracity or legality or illegality of what is written in the circular?

MR. FRAZER: No. I could understand that circulars might contain very many false statements.

MR. HAMILL: Precisely. Then I think this is the first time we have agreed during this trial.

MR. FRAZER. It is still real evidence as to the type. Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Did you ever distribute leaflets in Jersey City, Mr. Milgram, without being interfered with?

A. Yes.

Q. When?

A. The day following the day I distributed these leaflets.

Q. Subsequent to the Griffin decision by the Supreme Court?

A. Yes.

Q. And when after the Griffin decision; do you know when the Griffin decision was handed down?

THE COURT: I can give you the date.

THE WITNESS: I think it was March 28th, I am not sure.

THE COURT: March 28th.

Q. Well, when did you attempt to distribute circulars are that?

A. On March 29th and on March 31st. Then on April first I was allowed.

Q. On April first you were allowed to?

A. Yes.

Q. In other words you saw in the newspapers that the United States Supreme Court had decided the Griffin case and the very next day you went over there and attempted to distribute circulars?

A. Yes, sir.

Q. And two days later you attempted to do the same thing?

A. Yes.

Q. And the following day, namely, April first, which was three days after the decision was handed down, you were permitted to distribute leaflets?

A. Yes. However, I was stopped again——

MR. GLAVIN: There is no question pending. I move to strike it out.

Q. By the way, you live also at the Baldwin Avenue address?

A. Yes.

MR. GLAVIN: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. That is, the first of April you were allowed to distribute uninterruptedly?

A. Yes.

Q. Were you ever stopped after that?

A. Yes, on April 30th, at the time of the Thomas meeting.

MR. GLAVIN: I object on the ground——

Q. Will you say what——

MR. GLAVIN: Do you mind if I make my objection?

THE COURT: I will give you the same ruling and give you the same exception.

MR. GLAVIN: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. On April 30th at the time of the Thomas meeting, will you say what happened then?

A. Several people went by train, including myself, one of them had a batch of newspapers, I had a bunch of magazines called "War, what for?"

The police officers came up to all of us. We had not begun to distribute any of these, we were just carrying them. The police officers came up and took them away from us, both the newspapers and magazines. There was a bit of a scuffle and some of us refused to give them up, but they tore them away, and we never got them back.

Q. Does that lead you to believe there is any significance about April first?

MR. GLAVIN: I object to what it leads her to believe.

MR. FRAZER: I will withdraw it. Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. So that in addition to going to the so-called meeting at Journal Square on April 30th for the purpose of—I withdraw the question. Nothing further.

MR. FRAZER: That is all.

(Witness excused.)

MR. FRAZER: May I recall Mr. Milgram for just one question?

MORRIS MILGRAM, recalled.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Milgram, did you have occasion to go down to see Captain Quaile of the Jersey City Police?

A. I was forced to see Captain Quaile by a police officer on November 29th. That was when my wife was distributing leaflets and——

Q. Do you mean November 29th?

A. I am sorry, I meant March 29th. It was on March 29th when my wife was distributing leaflets and immediately after the Supreme Court decision, that leaflets were taken from her, and when I protested to the officer No. 1095 who took her leaflets, he had me arrested and took me to Captain Quaile.

MR. GLAVIN: I don't want to interrupt. I just want my same objection to this testimony and an exception.

THE COURT: Certainly.

(Which exception was allowed and sealed accordingly.)

(Seal)

MR. FRAZER: May we assume that this runs to the whole line of examination?

MR. GLAVIN: No, I made no objection to some of it.

A. I was taken to Captain Quaile by officer No. 1095, and officer No. 1095 was rebuked by Captain Quaile and we had a discussion concerning the distribution of leaflets and I asked him whether he intended to continue to seize leaflets from leaflet distributors and what he was going to do about the Supreme Court decision and he told me "We are enforcing the Jersey City ordinance, not the Constitution." And with a warning to me he let me go.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. Who said that?

A. Captain Quaile and at the Montgomery Street precinct.

Q. Captain Quaile at the Montgomery Street precinct?

A. Yes.

Q. Is that the precinct that Captain Quaile is captain of?

A. I don't know whether he was loaned to that precinct. All I know is that he was the officer to whom I was handed over.

Q. Do you know Captain Quaile?

A. He introduced himself to me when I asked him what his name was.

Q. What is that?

A. He introduced himself when I asked him what his name was.

Q. I see. That was the day after the—as a matter of fact, this was the day that the Griffin decision appeared in the newspapers, was it?

A. No, that was November 29th, some time after the Griffin decision had appeared.

MR. FRAZER: Do you mean November 29th?

THE WITNESS: I am sorry, March 29th.

Q. Do you know when the Griffin decision appeared? A. I am not certain whether it appeared on March 28th or sooner. I know on March 28th it was in the newspapers.

MR. HAMILL: You did not get an official copy of that decision, did you?

THE WITNESS: Yes, I have seen an official copy——

MR. HAMILL: I am saying that because we tried to and couldn't and I know we were held up for over a week getting it because they were not printed in Washington.

THE COURT: They were printed but they were not sent out.

MR. FRAZER: It was in the *Times*.

THE COURT: Dean Frazer, I think I was a little hard on counsel when I said I would sit until five. I thought we would be crowded for time. So I won't call another witness and I will not have you call one. Mr. Hamill, I found one other decision under that statute we were discussing, the one you gave me in New Jersey, State against Scott, in 90 Atlantic 235. That was a case arising out of a silk strike in Paterson where Scott was convicted in Quarter Sessions of Passaic County and the Supreme Court reversed his conviction, saying that the article that he had written in the newspaper, which was very abusive to the city administration, did not come within the language of the particular Crimes Act.

MR. HAMILL: I think you will find it has no bearing on the other case. You cannot libel an administra-

tion, or you cannot libel a government in the sense that they could sue for libel. You can call a political party or an administration all the black-legs or crooks you want to as long as you do not identify, and you cannot be sued for libel. They so hold—I have forgotten the name of the case—but the Chicago *Tribune* was in it. The Chicago *Tribune* was sued for libel. You cannot libel a government.

THE COURT: There are two other cases, the State against Quinlan and the State against Boyd, also arising out of the silk strike, in 91 Atlantic at page 111, and 586, where the Supreme Court upheld convictions for sabotage under the section following the one we were discussing this morning.

We will adjourn now until ten-thirty tomorrow morning.

(At this point an adjournment was taken to Friday, June 3, 1938, at 10:30 A. M.)

Friday, June 3, 1938.

Case continued.

Appearances as before.

THE COURT: Mr. Hamill, I am going to add to the literature on the subject of this statute. I found one charge to the Grand Jury——

MR. HAMILL: Well, now, may I say this to your Honor——

THE COURT: I am just going to give the reference.

MR. HAMILL: May I say this to your Honor: Why if I may ask, does your Honor read into the record laws and decisions of this jurisdiction when, by force

of the law, the Court takes judicial notice of the existence of these laws and these decisions? I mean is it not unnecessarily adding to the record? I submit that inquiry to your Honor.

You might just as well put the Constitution of the United States in or the laws of the State of New Jersey or anything else. The courts take judicial notice of those things.

THE COURT: Mr. Hamill, you are adding to the record by those remarks more than the reference I was going to give.

MR. HAMILL: I beg pardon?

THE COURT: You are adding to the record more by talking now than I was going to by reading the two pages from the law journal, which would be convenient for me.

MR. HAMILL: Well, I am not going to question the correctness of your Honor's statement, but I did want to express that thought to the Court.

THE COURT: Well, do you mind——

MR. FRAZER: I think your Honor's references are very useful to counsel. We appreciate them.

THE COURT: Do you mind if I read the citations into the record?

MR. HAMILL: Well, of course——

THE COURT: Do you mind?

MR. HAMILL: Of course, when the Dean instructs, there is no appeal from that decision.

THE COURT: I don't think he instructs me. I asked you do you mind if I read into the record? Do you mind if I read these citations into the record?

MR. HAMILL: Your Honor, it is not for me to mind or not to mind. That is my situation.

THE COURT: 21 New Jersey Law Journal at page 140 and 25 New Jersey Law Journal at page——

MR. HAMILL: I didn't get the reference, your Honor.

THE COURT: 21 New Jersey Law Journal.

MR. HAMILL: 21 New Jersey Law Journal.

THE COURT: At page 140.

MR. HAMILL: Page 140.

THE COURT: 25 New Jersey Law Journal at page 321. All right.

MR. FRAZER: Your Honor will remember that I agreed to supply Mr. Hamill with certain information as to the names or the numbers of officers who were testified to by Mr. Nydes yesterday.

MR. HAMILL: You gave me what?

MR. FRAZER: Mr. Nydes did not have his memorandum of the officers' numbers and it was agreed that I was to supply those numbers, and I am now doing so for the purpose of the record. The officers have badge numbers 134 and 564, and the car——

MR. HAMILL: Now, I didn't get those; not so fast, if you please. Badge numbers——

MR. FRAZER: 134 and 564, and the registration number of the car in which they drove was MG-543. Then in connection with the testimony of Mr. Silverstein the names of the managers of the halls he mentioned are as follows: White Eagle Hall, Mrs. L. Gorzynski; Columbia Hall, Jack Flieger; the Polish Hall, we were unable to find anyone who answered to the title of manager. I cannot supply that name.

MR. HAMILL: So that as the statement stands—maybe I have spoken too quickly—have you any name——

MR. FRAZER: For the Polish Hall I have not. It is some kind of a committee that operates there.

THE COURT: Doesn't the witness remember——

MR. FRAZER: He does not remember the name, sir, of the person with whom he spoke and he thought he could find out, but the hall apparently is operated by a committee and there is no one who assumes the responsibility of being manager, so-called.

Now, I would like to ask Mr. Hamill whether he has had an opportunity to examine these plants in Jersey City, which I gave him yesterday, and whether he is willing to stipulate that any of them is engaged in interstate commerce within the meaning of the Wagner Act.

MR. HAMILL: I will not be able in any case to stipulate that they come within the meaning of the Wagner Act, but I will know by noontime, I will be able by noontime to give you an answer, as to what number of them and all of them, if they are, located in Jersey City.

You will, of course, understand that when we left here and got back, all public business was closed, and I could not turn it over to anybody to investigate and give me the information. But I expect to have word for you by the noon recess.

MR. FRAZER: I think that it will not be difficult for us to prove that they are located in Jersey City. I understand that you are unwilling to stipulate that they are engaged in interstate commerce, whether they be so engaged or not?

MR. HAMILL: I have no means of knowing. That is my trouble. I have no means of knowing.

THE COURT: Well, you will have to call the manager from each plant.

MR. FRAZER: Yes, that is all right.

MR. HAMILL: What I mean is, I certainly do not know and cannot be expected to know whether a particular business is in interstate commerce. I am willing to turn it over to someone who might know, but I could not turn it over before this morning.

MR. FRAZER: You are quite certain you don't know whether the Colgate Palmolive Peet Company sells soap outside of New Jersey or not?

MR. HAMILL: Well, I know the way you know. I believe they sell soap to every country in the world. But now whether you or I could testify to that is another thing. You ask as if my opinion is evidential.

MR. FRAZER: All right. I just wanted to know whether you would be willing.

MR. HAMILL: I know that the Public Service is located in New Jersey, the Public Service Corporation. Now whether it is under the Wagner Act or not I don't know. I know certain other corporations—they are matters of common knowledge. The Court would almost take judicial notice of the fact, but that is far different from asking an attorney, does he admit they come under a certain law. I don't know.

MR. FRAZER: Now I, in pursuance of the understanding between the Court and counsel in regard to certain of the officials of Jersey City, have already spoken to Mr. Hamill before, but for the sake of the record I wish to state that I have requested him to have Director Casey of Jersey City in attendance on the Court today at twelve o'clock. I understand from Mr. Hamill that he has already made such arrangements.

MR. HAMILL: Suppose you state it to the Court.

MR. HERSHENSTEIN: Your Honor, we have made these arrangements to have Commissioner Casey here in the Court room.

MR. HAMILL: You want none of the others subpœnaed witnesses today except Commissioner Casey?

MR. FRAZER: That is all.

MR. HAMILL: All right.

MR. FRAZER: Mrs. McKee, will you take the stand, please.

FRANCES McKEE, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

THE CLERK: Where do you reside?

THE WITNESS: The Hotel Brevoort, New York City.

Q. Mrs. McKee, are you associated with the Civil Liberties Union?

A. Yes, I am executive secretary of the New Jersey Civil Liberties Union.

Q. And in that capacity did you have occasion to seek to obtain halls for meetings of the Union?

A. I attempted to obtain a banquet hall for a dinner and small conference rooms.

Q. And will you state where you made those efforts in Jersey City?

A. In Jersey City I made an effort at the Fairmount Hotel and at the Plaza Hotel for the dinner and for conference rooms at the Y. M. C. A. and Y. W. C. A.

MR. HAMILL: At the Fairmount Hotel, at what other places?

THE WITNESS: The Plaza Hotel

MR. HAMILL: What other?

THE WITNESS: For conference rooms at the Y. M. C. A. and Y. W. C. A.

MR. HAMILL: At the Y. M. C. A. and at the Y. W. C. A.

Q. Were you able to obtain the halls?

A. No, I wasn't.

Q. And with special reference to the Fairmount Hotel——

THE COURT: Fairmont, is that it?

Q. Fairmount, I think, is it not?

A. Yes, m-o-u-n-t.

Q. Will you state what occurred there?

MR. HAMILL: Now, is that the hotel at Boulevard and Fairmount Avenue?

THE WITNESS: Yes, it is, it is the Fairmount Hotel.

A. On April 13th I went there and inquired whom I should see about making arrangements to rent the hotel to hold the Civil Liberties dinner there and I was taken around to the manager's office. I told him the New Jersey Civil Liberties Union——

MR. HAMILL: No, not what you told him. I object under your Honor's ruling.

THE COURT: Mr. Hamill, it is not what he told her. She is only saying that she gave the man the name of the organization.

MR. HAMILL: Of course, my objection is these declarations are self-serving.

THE COURT: That can hardly be very self-serving. I will allow it.

MR. HAMILL: I want to enter an objection and have a ruling.

THE COURT: I have ruled against you. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Will you proceed, Mrs. McKee.

A. I asked him if we could use the Fairmount Hotel for that purpose during the last week in April or the first week in May.

THE COURT: What is his name, please?

THE WITNESS: His name is William K. Moser.

THE COURT: We had his name before.

MR. HAMILL: I ask your Honor to instruct the witness that she must not tell what Mr. Moser said to her. The only thing——

THE COURT: Mr. Moser is going to be a witness in this Court, he can speak for himself.

MR. HAMILL: Then that testimony is competent testimony, but what he said from the lips of another witness, it is my contention is not.

Q. Now, did Mr. Moser at that time give you a card——

MR. HAMILL: Now, may I say, your Honor please——

A. After he said we could hold the dinner there he did give me a card.

MR. HAMILL: She can say what Mr. Moser did. This is important testimony. Ordinarily I don't mind a leading question, it saves time; it is sometimes very necessary, but in a situation of this kind we ought to adhere strictly to the legal rules.

Q. He did give you a card?

A. Yes, he did.

Q. And I show you a card and ask you whether that is the card which he gave you.

A. Yes, it is.

MR. FRAZER: I would like to offer the card.

MR. HAMILL: Oh, no. That is nothing more than— instead of testifying to what Mr. Moser said to her, that is the same as saying "Mr. Moser handed me that statement."

THE COURT: May I see the card?

MR. HAMILL: And Mr.—well, now, to whom will I give it?

MR. FRAZER: I will hand it to his Honor.

MR. HAMILL: And Mr. Frazer saying, "I hand the statement in evidence."

Now, what is the difference whether Mr. Moser said these things which would be evidence or Mr. Moser put them on a card and then they are read in evidence?

THE COURT: Marke it for identification, and then when Mr. Moser is here we will ask him about it.

(Marked Exhibit P-5 for identification.)

Q. How large an assembly hall did you request accommodation for?

A. I requested accommodation for three or four hundred, and on learning that I couldn't obtain such a large place there, asked how many we could have, because we would specially like to hold it at that hotel.

MR. HAMILL: Oh, I object to this, telling the reason why she wanted to hold the meeting.

THE COURT: She is advertising Jersey City.

MR. HAMILL: Well, even so, she didn't come over to advertise Jersey City. I think the court will take judicial notice of that; not in any complimentary fashion

THE WITNESS: May I continue?

Q. What date did you arrange——

MR. HAMILL: The court will take judicial notice that her visit was not out of motives of graciousness.

Q. What date did you ask for?

A. Well, I asked for any date, during the last week in April or the first week in May and, as I recall it, he said we might have Thursday, May 5, as well as a number of other dates, and I selected May 5.

Q. Did you have the dinner at that hall?

A. No, we didn't. After these arrangements were made, Mr. Moser changed his mind.

MR. HAMILL: No, I object to that.

THE COURT: She is not saying what he said.

MR. HAMILL: Oh, she is saying he changed his mind. She could only know that by reason of some one telling her.

A. Continuing.) Well, he did tell me.

THE COURT: As I understand it, he refused to allow——

MR. HAMILL: I object to that.

THE COURT: Did he refuse?

MR. HAMILL: Well, now, your Honor——

THE COURT: Did he refuse?

THE WITNESS: Yes. He asked me——

THE COURT: No, not what he said; just the fact.

THE WITNESS: Yes, he refused.

Q. And before he refused, will you state specifically——

MR. HAMILL: Now, just ask her what she said.

Q. Or what did you state between the time that he gav you the hall for May 5th and the time that he refused, wha did you say to him?

A. In answer to a question——

MR. HAMILL: I object to what she said to him. Thi is putting in her declaration as evidence It is evidentl a self-serving declaration. It is a declaration in favo of interest.

THE COURT: I am not going to allow the conversa tion. Mr. Moser will be here, I understand.

MR. FRAZER: Well, sir, if I can't prove the conver sation by Mrs. McKee, her half of it, and I can't prov by her Mr. Moser's half of it, when I call Mr. Moser can't prove Mrs. McKee's half by him or his half. mean how do I do it? Put them on as Siamese twins

THE COURT: Well, she has testified that she aske for this hall, this dining room, and he said at first h would give it to her and afterwards refused it; is tha right?

THE WITNESS: Yes, on certain grounds.

THE COURT: Well, those grounds we will learn fro Mr. Moser.

MR. FRAZER: Well, may I have her state what sh said to Mr. Moser and then prove by Mr. Moser wha he said in reply? I mean there must be some way I ca prove this. If I can't prove it either by Mrs. McKe or Mr. Moser, it seems that I can't put the testimony in

THE COURT: Well, call Mr. Moser and you can prov it by him.

MR. FRAZER: Can I prove the whole conversatio by Mr. Moser?

THE COURT: Yes.

MR. FRAZER: Why can I not prove the whole co versation by Mrs. McKee then? She is equally——

THE COURT: Because that is hearsay, Dean Frazer.

MR. FRAZER: Well, why isn't Mr. Moser's testimony as to what Mrs. McKee said hearsay then?

MR. HAMILL: Well, we are going to deal with that, or rather we, so far as we are permitted by our position, will deal with that when it comes up on the stand. It may be we will object to his testifying.

THE WITNESS: May I——

MR. HAMILL: You seem to take it for granted that you have a perfect right to put those statements in evidence. Now it is quite probable that you haven't any right to put them in evi[illegible]ce at all.

Q. Were you in the co[illegible]y of anyone when you called upon Mr. Moser on this occasion?

A. Yes, I was accompanied by Mrs. Mildred Cox.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mrs. McKee, you live at the Hotel Brevoort in New York City?

A. Yes, I do.

Q. And how long, please, have you lived there?

A. I have lived there since November.

Q. 1938?

MR. FRAZER: No, '37.

A. '37.

Q. 1937?

A. Yes.

Q. And what date in November, 1937?

A. I don't remember the exact date. It was some time along the middle of November.

Q. Well, it was some time along in the month of November?

A. Yes.

Q. Did you tell us when you called on Mr. Moser, the dates?

A. I told you that I called on him April 13th.

Q. April 13, 1938?

A. That is right.

Q. And where had you lived before you came to the Hotel Brevoort?

A. I lived on West 11th Street where I had an apartment.

Q. And how long did you live there?

A. A year, I think.

Q. And where did you live before that?

A. Well, before that I had an apartment at 30 Grove Street, in New York.

Q. And how long have you been executive secretary of New Jersey for the Civil Liberties Union?

A. Since March 14th.

Q. What year?

A. This year.

Q. Since March 14, 1938?

A. Yes.

Q. Now is that the American Civil Liberties Union?

A. That is the New Jersey Civil Liberties Union.

Q. And they are affiliated with the American Civil Liberties Union?

A. Yes.

Q. You have been executive secretary since March, 1938, some date in March?

A. That's right.

Q. And what was your official position before that?

A. I hadn't worked for ten or twelve years before that; I had been simply a housewife and taking care of my child.

Q. Well, now, in what capacity did you visit Mr. Moser?

A. As executive secretary of the New Jersey Civil Liberties Union and as a member of the Dinner Committee of the New Jersey Civil Liberties Union.

Q. You never lived in New Jersey, did you, Mrs. McKee?

A. Yes, I brought up in New Jersey.

Q. And when did you first leave New Jersey to take up your residence in New York?

MR. FRAZER: I object to this as being wholly immaterial, sir.

MR. HAMILL: A matter of testing credibility, the Court allows wide latitude in that.

THE COURT: I don't allow much latitude——

MR. HAMILL: We are bound by her answer.

THE COURT: I don't allow much latitude in inquiring into the personal affairs of witnesses unless they have a bearing on the case.

MR. HAMILL: To test credibility.

THE COURT: Not into their personal affairs.

Q. When did you first become interested in civil liberties in New Jersey?

A. I have always been interested in civil liberties everywhere.

Q. No, when did you first become interested in civil liberties in New Jersey?

MR. FRAZER: "Everywhere" would seem to include New Jersey, sir.

A. Well, as a small child at my father's table; I cannot answer much more specifically than that.

Q. Was the Civil Liberties Union——

A. Oh, do you mean the New Jersey Civil Liberties Union or civil liberties in New Jersey?

Q. The Civil Liberties Union.

A. Oh, pardon me, I misunderstood you. I became interested in it about a week before I came out to work for them.

Q. That is before March, 1938?

A. Yes.

Q. How long before that?

A. Well, I don't recall the exact date but they notifie me of my appointment on the 11th of March and it was tw or three days before that, I think, I had come out to b interviewed for the position.

Q. Did you ever participate in their activities?

A. No, I never have.

Q. How did they come to engage your services?

MR. FRAZER: I object. How can she testify to th state of mind of the Civil Liberties Union?

THE COURT: I don't think it is proper but the an swer may be interesting; go ahead.

A. I asked them to hire me.

Q. Well, that answers very candidly. I think that's all

MR. FRAZER: Thank you, Mrs. McKee.

Mrs. Cox.

Oh, might I ask Mrs. McKee one question?

By MR. FRAZER:

Q. Are these figures here in your handwriting?

A. Yes, I wrote them down at Mr. Moser's direction.

MR. FRAZER: Referring to P-5 for identification.

MR. HAMILL: I ask that that part which says " wrote them at Mr. Moser's request" be stricken ou that any request by Mr. Moser be stricken out. I a quite willing that that part which says, "Yes, that i my handwriting," that that stay in.

THE COURT: All right.

MILDRED COX, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Address?

THE WITNESS: 385 Belmont Avenue, Newark.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mrs. Cox, were you with Mrs. McKee on April 13th, was it, 1938, when she went to Jersey City looking for halls for the Civil Liberties Union?

A. I was.

Q. And did you go to any other place other than the Fairmount Hotel with her?

A. Yes, we went to the Plaza Hotel.

MR. HAMILL: I cannot hear her, your Honor.

A. The Plaza Hotel.

MR. HAMILL: If you don't mind I will stand up.

Q. The Plaza Hotel. Any other place?

A. No, that is all.

Q. Just those two hotels?

A. Yes.

Q. And did you succeed in obtaining a hall at either of those places?

A. No, we did not.

Q. Did you meet Mr. Moser that day?

A. Yes, I did.

Q. Were you present when Mr. Moser gave the card, Exhibit P-5 for identification, to Mrs. McKee?

A. Yes, I was.

Q. And did you observe under what circumstances Mrs. McKee made certain annotations upon that card?

A. Yes.

Q. And what were the circumstances under which she made those annotations?

A. Mr. Moser agreed to give her the hall for the dinner——

MR. HAMILL: I object, that is an attempt by simply varying the question without changing the purpose.

THE COURT: It is already in evidence.

MR. HAMILL: The card is not in evidence; the card is merely marked for identification.

MR. FRAZER: But he gave her the hall.

THE COURT: The other witness said that he first agreed to give the hall; that is already in evidence.

Q. And having agreed to give the hall were any terms arranged for that hall?

A. Yes, he took us through the hotel to choose a room that we might desire.

MR. HAMILL: I cannot hear a word.

THE COURT: A little louder.

A. Mr. Moser took us through the hotel to choose a room that we might desire for the dinner.

Q. And was a room selected?

A. I believe so.

Q. And subsequent to that was there any change made in the arrangements about the hall?

MR. HAMILL: Now, Mr. Frazer, are you testifying or is the witness testifying?

MR. FRAZER: I am asking the witness.

MR. HAMILL: Oh, yes, but the witness has only to nod her head and your question is on the record. Now, this isn't the first time Mr. Frazer has put over evidence in the form of a question and that ought to stop.

Q. What happened after you went to examine the various halls?

A. We went back to Mr. Moser's office and when Mrs. McKee told him what she wanted the hall for he refused to give it to us.

Q. And what was it she wanted it for?

A. For a dinner for the Civil Liberties Union.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Mrs. Cox, you live at 385 Belmont Avenue, Newark?

A. Yes.

Q. And how long, please, have you lived there?

A. About a year and a half.

Q. And where did you live before that?

A. In 44 Hughes Street, Maplewood.

Q. And have you lived in New Jersey all your life?

A. Yes, I have.

Q. You are a member of the American Civil Liberties Union?

A. Yes.

Q. Of the New Jersey branch?

A. Yes, I am.

Q. Since how long, for how long?

A. Since last April.

Q. Since last April. Who asked you to join it?

A. Well, I don't remember anyone asked me to join it.

Q. And is this the first activity of the Civil Liberties Union, this hiring of the hall, that you took part in?

A. Yes, it is.

Q. I think that is all.

MR. FRAZER: Thank you, Mrs. Cox.

MR. HAMILL: Oh, may I ask Mrs. Cox a question, recall her to the stand, please?

THE COURT: Certainly.

By MR. HAMILL:

Q. Mrs. Cox, who is the head of the New Jersey branch of the Civil Liberties Union?

MR. FRAZER: I object as not cross-examination.

MR. HAMILL: If she knows.

THE COURT: You mean what individual?

MR. HAMILL: Yes.

THE COURT: I don't think it is cross-examination but I suppose it is relevant. Do you know?

THE WITNESS: I cannot think of the name at the moment.

THE COURT: Isn't it a matter of record somewhere?

(The witness retired.)

MR. FRAZER: I am perfectly willing to stipulate who it is.

THE COURT: It can't be a mystery.

MR. FRAZER: The Reverend Dr. Ball. I will stipulate—I think that's right——

THE COURT: What is his first name?

A VOICE IN THE COURTROOM: Archey D.

THE COURT: And what church does he have, if any?

THE VOICE: The Methodist Episcopal in Hackensack.

THE REPORTER: Was that Mrs. Cox's reply?

MR. HAMILL: It is a statement by Mr. Frazer.

MR. FRAZER: Mrs. Cox said she didn't remember his name and I was trying to help counsel by stipulating. If he doesn't want a stipulation it will be withdrawn.

MR. HAMILL: If you are helping counsel, I merely want to remark I fear the Greeks bearing gifts.

ASHLEY CARRICK, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Carrick, you are a member——

MR. HAMILL: Now, Mr. Carrick lives on Gifford Avenue, but I don't know the number. Is that right?

THE WITNESS: Yes; 103 Gifford Avenue.

MR. HAMILL: 103 Gifford Avenue.

Q. Mr. Carrick, you are a member of the bar of New Jersey, are you not?

A. That is right.

Q. And as we have just learned, live in Jersey City?

A. That is right.

Q. Now, on the night of April 30th, I believe it was, Mr. Norman Thomas came to Jersey City?

A. That is true.

Q. And attempted to speak in Journal Square?

A. That is right.

MR. HAMILL: Now, of course—Mr. Frazer, excuse me a moment, please—of course it is understood that we still renew our objection to the fact that this is something which happened after the bill of complaint, and object to the fact that your Honor permitted an amendment without giving us the right to have time to prepare for it when we asked for the adjournment.

THE COURT: Yes.

MR. HAMILL: All right.

Q. Mr. Carrick, you were in Journal Square that evening?

A. Yes, sir, I was.

Q. And will you state to the Court what you observed and what happened to you on that occasion?

A. I arrived at Journal Square after Mr. Norman Thomas had been sent to New York for the first time. There was quite a crowd milling about——.

THE COURT: Don't say anything you didn't see, Mr. Carrick. If you don't know whether he was sent to New York or not, don't tell us anything you didn't see.

THE WITNESS: I did see the crowd, however, hanging around the Square. So we made inquiries to know what was going on, and I was told by a policeman that Norman Thomas was in the Jersey Observer Building. So I went as near as I could to the entrance of the Observer Building. However, there were policemen making us move back and forth and preventing a crowd from collecting at the Observer Building. But I did see an unusual excitement at the building, and I concluded that Norman Thomas was coming out, and I moved up and I saw that he was coming out; and at that time I started to applaud and the crowd in general followed me and applauded, and even some people cheered. The moment the applauding started, the police began to disperse the crowd by running at them, pushing them and driving them away. I didn't like to turn and run, so I held my ground and I was evidently angry, and they saw that I was not going to run, so two, at least two policemen converged at me at the same time and approached me so closely on either shoulder that I could not raise my fists. At about this time, while I was struggling to free myself, a man who wore an overcoat but not a uniform approached and hit me in the eye, and another policeman struck me on the knee with a night stick. I was then not exactly beaten, but I was pushed around until I realized that there was no use trying to resist. I was then placed in a car with one policeman driving and one policeman sitting beside me and a detective sitting in the car. We then went down to

the New Jersey ferries. During the course of that ride I was not beaten up in any way. However, the officer who sat next to me and the detective used very obscene language.

Q. What did they say?

A. I can't repeat it, sir. I was held in the car at the Central Railroad of New Jersey ferry slip until a ferry was about ready to leave. While I was waiting for the ferry two other cars came down, bearing other people who the police had evidently picked up at the same time.

Mr. Hamill: Did you know those other people, Mr. Carrick?

The Witness: I have their names.

Mr. Hamill: I mean did you know them at that time?

The Witness: I didn't know them then.

A. (Continuing.) Two boys were forced into the car in which I was being held, and they sat on each other's laps because there wasn't room for them. When the ferry was ready to go we were put upon the ferry and there was absolutely no way that we could avoid going on the ferry and remaining there until the boat started except by another physical encounter. I stated to the policeman in the car that I was a Jersey resident and could prove it. Immediately upon arriving in New York I came back to the Jersey Observer Building and gave my statement to the reporters. And I believe that is all that I can testify to.

Mr. Frazer: Cross-examine.

Cross-Examination.

By Mr. Hamill:

Q. Did you say, Mr. Carrick, that two policemen struck you at Journal Square, or that someone that you didn't know and a policeman?

A. I didn't say that two policemen struck me.

Q. Well, I didn't get that. That is why I am asking you this question.

A. I said that a man wearing plain clothes stepped up to me and struck me in the eye while I was being held by two policemen.

Q. You don't know whether he belonged or was a member of the force or not? You had no means of knowing?

A. I don't know the man, no.

Q. And the policeman wore a uniform, the man who struck you did not?

A. Yes, the policemen wore uniforms.

MR. HAMILL: I think that is all, Mr. Carrick.

MR. FRAZER: Thank you, Mr. Carrick.

(Witness excused.)

MR. HAMILL: If your Honor please, we want to put on record at this time the fact that yesterday Mr. Arthur Vanderbilt, representing Mr. Norman Thomas, made application to the Supreme Court in the person of the Chief Justice thereof, for a mandamus to test the validity of the ordinance of Jersey City, the circular ordinance, rather the ordinance regarding public meetings without a permit, and that he was allowed an alternative writ of mandamus by the Chief Justice with a rule to take testimony.

MR. FRAZER: I move that the remarks be stricken from the record as being immaterial to this issue and as not being evidential, a mere statement of counsel.

THE COURT: Supposing you file, Mr. Hamill, if you want it in evidence, a copy of the allowance of the writ.

MR. HAMILL: If the Court wants it—I mean if there is any doubt about that, if the Court or counsel wants it——

THE COURT: I don't mean a certified copy; just a copy of it.

MR. HAMILL: We shall produce it.

THE COURT: Because I think it would be relevant on any opinion or any decision that I rendered.

MR. HAMILL: Then we shall produce that, your Honor.

WILLIAM C. KERNAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. You are a priest of what church?

A. Of the Episcopal Church.

Q. And you have a charge where, Father?

A. At Trinity Church in Bayonne.

Q. On the evening of April 30, 1938, were you at Journal Square, Jersey City?

A. I was.

Q. Will you state what happened there as you observed it?

A. Yes, sir. I arrived at Journal Square at about seven-thirty on that evening. I was waiting for the announced appearance of Mr. Norman Thomas to speak.

MR. HAMILL: Just excuse me, Father, for one minute.

It is understood that all of this testimony, so that I will not be interrupting anyone again, in order that we may understand, that all of this testimony as to what took place after the filing of the bill is subject to the objections I made, with the exceptions allowed?

MR. FRAZER: I offered counsel yesterday that his objection might go to this whole line of testimony without being renewed.

MR. HAMILL: Well, all right. Then that evidently settles the matter. It is.

Q. Will you proceed, Father Kernan?

A. Yes, sir. And while I was waiting for the a nounced appearance of Mr. Thomas, I walked around t Square, particularly around that part of it which lies b tween Hudson Boulevard and Sip Avenue. I observed pa ticularly that there were two people, one a young m and one a young woman, who were attempting to distribu some leaflets that concerned war.

I saw both of those people attacked by men in pla clothes, the leaflets taken from them, and in both instanc policemen in uniform standing there and doing nothing protect these people; the most that they did was to s "Break it up," "Break it up and move on." One of t people concerned in this, I believe, was a detective cause——

MR. HAMILL: Oh, I object, Father, not what y believe, what you know.

A. What I saw.

Q. What you saw.

A. One of these men was a detective because he w shoving Mrs. Morris Milgram along and she asked h who he was; he said he was a detective. She said, "Let see your badge," and he drew out something that he h in his hand—now, it might have been his watch, but I t it that it was his badge.

MR. HAMILL: Now, may I say this, your Hon please, I will have to object because if Father Kern cannot tell that it was his badge, that is the thing—

THE WITNESS: No, I didn't see it.

MR. HAMILL: —by which we identify him, and shall have to object to the testimony.

A. I didn't see what he held in his hand.

Q. Will you proceed, Father.

A. After that at about eight o'clock an automob drew up. The crowd rushed forward, began to cheer a

to applaud and to cry "There he is." There was no opportunity from where I stood, which was about thirty feet from where the car drew up to the curb, to see anybody even stand up in the automobile because the police were on it in a moment.

MR. HAMILL: Well—all right—it isn't evidential but since it helps me why should I object? Did you say the police were honest in their motives?

THE WITNESS: No, were on it——

MR. FRAZER: Were on it.

MR. HAMILL: Were on it in a moment. Oh, I do object to that.

A. The police converged on it in a moment quickly.

Q. In the twinkling of an eye?

A. In the twinkling of an eye, as quick as a flash. And then at once the police moved through the crowd from that point, which was at some place between Hudson Boulevard and Sip Avenue, to a waiting automobile at the corner of Hudson Boulevard and the Square. I followed the crowd to that point and saw the car drive off with the siren screaming.

Q. Were you able to see Mr. Thomas?

A. No, sir, you couldn't see him, the thing happened too fast.

Q. What happened after that, Father Kernan, as far as you were concerned?

A. Well, after that I stayed in the Square for about an hour more and I saw the general way in which the crowd was being handled, people weren't allowed to stand still. I saw Mr. Morris Milgram appear, he had a red scar on the left side of his face. I went down to police headquarters, asked the Chief of Police where Mr. Thomas was taken and he said he didn't know. Then I continued around the Square. I saw two young men arrested and shoved into a police car by the police officers.

Q. What had they been doing?

A. I don't know what they had been doing, sir.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. Father, may I ask why you were there that night?

A. Yes, sir, I was there because I understood that Mr. Thomas was going to make a speech in Journal Square. I also understood that he was going to be stopped. So I wanted to see if a thing like that were possible in the United States and I went down.

Q. Now, you didn't see Mr. Thomas though, did you?

A. No, sir, I didn't see him.

Q. You are not a member of the Civil Liberties Union?

A. No, sir.

Q. Then I don't understand you to say, Father, in any part of your testimony that at any time that evening you saw Mr. Thomas, is that correct?

A. That is absolutely correct.

MR. HAMILL: I think that's all, Father.

MR. FRAZER: Thank you very much, Father Kernan Is Mr. Timothy O'Brien here?

MR. HAMILL: May I recall Mr. Carrick for a question?

THE COURT: Certainly.

ASHLEY CARRICK, recalled.

CROSS-EXAMINATION (Continued).

By MR. HAMILL:

Q. Oh, Mr. Carrick, you are a member of the New Jersey bar, of course, and you have lived in Jersey City all your life?

A. Yes, sir.

Q. Now, you were aware of the existence of the ordinance forbidding the holding of public meetings on the streets or public places without the issue of a permit by the Director of Public Safety?

A. I am well aware of that ordinance.

Q. And you knew it at that time, of course?

A. Certainly.

Q. And you knew that it was denied to Mr. Thomas—I don't mean the date—you knew that it was denied?

A. I don't recall whether I knew it at that time or not; I did know that Norman Thomas was coming to speak and I wanted to see how he was going to be treated.

Q. Well, now, Mr. Carrick, didn't you know that at that time Mr. Thomas was coming to speak, permit or no permit?

A. I cannot recall whether I knew it at that time.

Q. Well, now, you had been reading the papers, and don't you know that he said at a meeting in New York that he would come to speak permit or no permit?

A. If that is the fact and the papers so record it I probably knew it, but I don't recall now what my state of mind was then.

Q. If you had known he had been denied a permit would it have changed your determination?

A. It certainly would not have.

Q. You mean you would have gone there anyhow?

A. I went there as an observer to see how Norman Thomas was going to be treated. It doesn't matter to me whether or not he had a permit.

Q. And you would have gone whether he had a permit or not?

A. Certainly, I would have gone if he was a gunman.

Q. That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Just a minute. Have you ever seen any other meetings in Journal Square?

A. Yes, sir, I have; I attended the Hague Rally at which O'Connell and Bernard failed to appear; at that time I saw the police unable to maintain order, I saw them run out a young man because they couldn't save him from the mob any other way.

MR. HAMILL: When you say——

MR. FRAZER: Wait a minute.

MR. HAMILL: Oh, I thought you had finished; there had been such a pronounced pause.

MR. FRAZER: I was just trying to assimilate what he had said.

Q. Did you see any other meetings besides that particular Hague meeting that you speak of?

A. Yes, sir, I went to the rally at Pershing Field. I saw a man carried out unconscious.

Q. When was that?

A. I believe it was about a week ago Saturday night.

Q. The so-called O'Connell meeting?

A. Yes, sir, the meeting at which O'Connell tried to speak.

Q. Did you know the man who was carried out?

A. No, I didn't know him; I have since learned from the papers who he was.

Q. Did you see when he was laid out?

A. No, sir.

Q. You didn't observe that?

A. No, sir.

Q. You merely saw him being carried out. Do they ever have any meetings in Journal Square during the political campaigns?

A. Yes, sir.

MR. HAMILL: I spoke at one, a big one. There isn't any doubt about that.

MR. FRAZER: What is the date, will you tell me?

MR. HAMILL: Oh, I don't know, maybe four years ago, maybe more. The campaign of 1929.

THE COURT: Have you got a copy of your speech?

MR. HAMILL: I made a good speech, you should have been there; you missed something.

THE COURT: Mr. Hamill, have you got a copy of it?

MR. HAMILL: No, it is one of those productions of wisdom that are lost to the world.

MR. FRAZER: All right, cross-examine if you want.

MR. HAMILL: That's all, Mr. Carrick.

MR. FRAZER: Now, Mr. O'Brien.

By MR. HAMILL:

Q. That is, Mr. Carrick, you have seen Republican and Democratic meetings and other meetings in that Square, haven't you?

A. I have seen meetings there until the night Burkitt was arrested.

Q. I mean you have seen them and regardless of political parties, is that correct?

A. I think Mr. Burkitt's speech was a political speech.

Q. Yes, and you have seen other speeches—I mean you have seen Democratic meetings there and you have seen Republican meetings there—I mean before a year ago, say?

A. That's right, to my knowledge none of them had a permit.

Q. Well, now; to your knowledge none of them had a permit, but you weren't particularly interested at that time whether they had a permit or not; the question wasn't a live question, was it?

A. No.

MR. HAMILL: I don't know whether I had a permit or not.

MR. FRAZER: No, you didn't, you know you didn't.

MR. HAMILL: You know me too well. That's all.

TIMOTHY O'BRIEN, called and sworn on behalf of the plaintiffs, testied as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. I think the date is May 7, 1938.

MR. HAMILL: Now may I get Mr. O'Brien's name and address?

THE CLERK: Timothy O'Brien.

MR. HAMILL: Mr. Timothy O'Brien; and what address?

THE WITNESS: 115 Mott Street, New York City.

MR. HAMILL: Mott Street.

THE WITNESS: Mott.

MR. HAMILL: Jersey City?

THE WITNESS; New York City.

MR. HAMILL: 115 Mott Street, New York City. All right, Mr. O'Brien.

Q. Mr. O'Brien, what is your business?

A. I am affiliated with the Catholic Worker and secretary of the Catholic Union of the Unemployed.

MR. HAMILL: I wish you would talk a little louder, Mr. O'Brien, please.

THE WITNESS: I am affiliated with the Catholic Worker and I am secretary of the Catholic Union of Unemployed, which is an affiliate of the Catholic Workers Union.

THE COURT: What is the Catholic Worker? A newspaper?

THE WITNESS: A newspaper and a movement.

Q. How frequent publication of the paper?

A. Monthly.

Q. Now the date I think is May 7, 1938. Were you in Journal Square that night?

A. I arrived in Journal Square about 7:30 on the evening of May 7th.

Q. Now from the time that you arrived will you state what happened to you and what you observed in Journal Square and what the occasion of your being there was?

A. I arrived at 7:30 in the company of William Callahan, managing editor of our paper, and Joe Zarella, also of the Catholic Worker establishment.

MR. HAMILL: I wish you would spell Zarella.

THE CLERK: Z-a-r-e-l-l-a.

MR. HAMILL: Zarella.

A. (Continuing.) We arrived in the Square at 7:30. We came for the intent and purpose of distributing literature, in respect to the fact that we wanted to restore civil rights in Jersey City——

MR. HAMILL: Now, no. I object to that. Never mind——

Q. Have you the literature here?

MR. HAMILL: Never mind telling us why. He came to distribute the literature.

Q. Have you a copy of the literature?

A. One of my colleagues has, I think.

THE COURT: What was the date of this?

THE WITNESS: May 7th, your Honor.

MR. HAMILL: Now——

MR. FRAZER: This is my witness, you know.

MR. HAMILL: Yes, I know. That is why I am watching you.

Q. I show what appears to be a mimeographic sheet; is that the literature which you were distributing?

A. Yes, sir.

MR. FRAZER: I would like to offer this in evidence.

MR. HAMILL: What purpose will this serve in evidence? The only thing that should go in is the fact that he distributed a pamphlet. The contents of the pamphlet, or, shall I call it circular, or leaflet, are not evidential, and the evident purpose of this is to get the contents in. Now the only thing judicially that the court can take cognizance of is that he attempted to distribute a circular, which did not contain any unlawful matter. The actual contents are not evidential in this case. Otherwise he could say, "I came to distribute the dictionary," or "I came to distribute the history of the world."

MR. FRAZER: That wouldn't be true.

MR. HAMILL: "In fifteen volumes" and then Mr. Frazer would say, "I put the fifteen volumes in evidence."

THE COURT: Mr. Hamill, you admitted the other circular without objection.

MR. HAMILL: Sir?

THE COURT: You admitted the other circular without objection.

MR. HAMILL: No, I distinctly had it understood with Mr. Frazer, and the record will bear me out, that the contents were not evidence.

THE COURT: I so held; they are not.

MR. HAMILL: Well, then, may I ask what is the necessity for putting in any circular?

MR. FRAZER: I might——

MR. HAMILL: He came to distribute a circular.

MR. FRAZER: Have you finished? May I speak?

MR. HAMILL: In a minute. Suppose he came and said, "I came to distribute the laws of 1902." Would your Honor permit that book to go in evidence?

THE COURT: Yes, I would.

MR. HAMILL: I beg pardon?

THE COURT: I would, yes.

MR. HAMILL: With all its contents?

THE COURT: Yes.

MR. HAMILL: To clutter up a record with things that are not legally part of a record?

THE COURT: As an exhibit, it is not cluttering up the record. The circular will be admitted. You may have an exception.

MR. HAMILL: I object.

THE COURT: Exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

(Circular marked Exhibit P-7.)

Q. Did you proceed then to distribute these——

MR. HAMILL: Ask him what he did, do not suggest to him——

MR. FRAZER: Well, I am just picking him up where he left off.

MR. HAMILL: All right.

MR. FRAZER: Continuity.

MR. HAMILL: All right.

A. We decided then that there were enough people assembled in Jersey City to go about with our business that brought us over there, of distributing these circulars. The three of us, Mr. Callahan, Mr. Zarella and myself, were about to start in in this activity. I had not time to take my leaflets out, though Mr. Callahan and Mr. Zarella did. Mr. Callahan got rid of, I think, three or four leaflets, and Joe Zarella two, and when I saw the police converging upon them and seize them and bring them away and take from them in no mild manner their leaflets, I retained mine in my pocket. I saw the futility of bringing them out. So a number of police I observed took Callahan and Mr. Zarella from the crowd, confiscated their leaflets, and brought them——

MR. HAMILL: Was all this——

MR. FRAZER: Now, I object to this continuous interruption, if it please the Court.

MR. HAMILL: All right. Then I object, unless he tells us he saw it.

THE COURT: Yes, only tell what you saw, please.

MR. FRAZER: That is what he is testifying to.

THE WITNESS: I saw this.

MR. HAMILL: All right.

A. (Continuing.) I was in the company of these two men when this happened.

I couldn't see the purpose of pulling out my leaflets to distribute them when the others, the leaflets of the other two with me, were confiscated. I saw that they were brought by policemen off from the crowd to a man in police uniform, probably of a high rank, who I learned later——

MR. HAMILL: I object to "probably of a high rank."

THE WITNESS: Of a high rank.

Q. Who was——

MR. HAMILL: How do you know——

Q. Who was later, you found out——
A. Who was later I found out to be Chief Walsh——

MR. HAMILL: Thanks. He ought to be grateful to you for your assistance to him, but I object——

Q. Who——
A. Chief Walsh of Jersey City.

MR. FRAZER: I merely continued the words he was using when you interrupted.

MR. HAMILL: No, you said which he found later was of high rank.

MR. FRAZER: That is what he said.

MR. HAMILL: No, let's see what he did say.

(Previous questions and answers read by the reporter.)

Q. Now will you proceed with your story?
A. Who I found out to be Police Chief Walsh.

MR. HAMILL: Now, who was right and who was wrong? All right, we will let that be undetermined. Go ahead. Examine him.

A. (Continuing.) I heard Mr. Callahan and Mr. Zarella proclaim that they had a right to distribute literature in view of the fact that there was——

MR. HAMILL: No, I object to that, what they said. I object to that.

A. (Continuing.) And they were refused arrest by the police, and the leaflets were taken.

MR. HAMILL: I object to that.

MR. FRAZER: Just one minute.

MR. HAMILL: What did the police do?

MR. FRAZER: One minute.

Q. You heard Mr. Callahan and your other friend say something to someone?

A. To the policemen who were confiscating the leaflets.

Q. Now what was it they said to the policeman who was confiscating the leaflets?

MR. HAMILL: Now, if your Honor please——

THE COURT: Yes.

MR. HAMILL: He can say he heard them say something to a policeman and as a result of that something that he did say, the police did not arrest him.

MR. FRAZER: The question now is, what he heard his companion say to the police who had him in charge. That is undoubtedly a part of the general picture of the case and I insist upon the right——

THE COURT: You may answer.

MR. HAMILL: I object, if your Honor please. Your Honor will grant me an exception?

THE COURT: Yes.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

A. Not remembering the exact words, I do know what they did say in effect was——

MR. HAMILL: No.

A. (Continuing.) We had a right to distribute this literature.

MR. HAMILL: I object to that.

THE COURT: No, you must give their words.

A. (Continuing.) They proclaimed to the police they had a right to distribute literature.

MR. HAMILL: I object, if he doesn't know the exact words.

Q. Your nearest recollection of what they said, Mr. O'Brien.

A. As near as I can recall they did say that they had a right and they were in their right legal bounds to distribute these leaflets and they questioned the police on their right to confiscate the literature.

MR. HAMILL: I object to that, "they questioned the police." What did they say, if anything?

THE COURT: That doesn't add anything. The police, as I understand, did confiscate the literature, is that right?

THE WITNESS: They did confiscate the literature.

MR. HAMILL: And as a result of what they said, the police took their literature.

THE WITNESS: I don't know if it was as a result of what they said, but the police took the literature.

MR. HAMILL: Well, when you use the word "confiscate" you mean take it?

MR. FRAZER: Wait a minute.

THE WITNESS: Forcibly.

MR. HAMILL: All right.

MR. FRAZER: If it please the Court, this witness is still under direct examination and I ask the Court to advise counsel that he is not to argue with my witness while he is under examination by me.

MR. HAMILL: It might be well to include in the admonition one to you not to be putting legal questions.

Q. Now, Mr. O'Brien, after this seizing of the literature, what did you see? What happened to your two companions?

A. I saw them, after the leaflets were taken, that they were just shunted off on into the crowd, and their arguments then with the police were futile, and the thing was ended then, as far as their activity is concerned.

Q. Now, did you see anything else that evening?

A. That same evening I still had retained my leaflets, and at a later time in the evening, I would say about eight-thirty, I attempted myself to distribute leaflets.

Knowing the possibilities of physical danger and the way my colleagues were handled, I notified some camera men on the scene; the first that I contacted was one from the New York *Times*.

MR. HAMILL: No.

Q. Go ahead.

MR. HAMILL: Your Honor please, here is what he says, that he tried to distribute leaflets that night; that knowing the possibilities of danger that he notified camera men. Now, his preparations for what he did are not relevant. Let him tell us just what he did.

MR. FRAZER: I think his preparations are very relevant.

MR. HAMILL: He might as well tell us, "knowing the possibilities of danger, I read the law books before I went up there," that he consulted somebody. What did he do?

THE WITNESS: I am telling counsel what I did.

THE COURT: Just tell what you did.

A. (Continuing.) I notified the camera men. The first I contacted was one of the New York *Times* and one from the Associated Press. I told these people——

MR. HAMILL: No, I object to what he told them.

MR. FRAZER: What he did, what he told them is what he did.

MR. HAMILL: No, what he did, not what he told them.

Q. Proceed, please.

A. I told them what I was about to do.

MR. HAMILL: I object to what he told them. Now, will your Honor rule?

THE COURT: Yes.

MR. FRAZER: I ask an exception to the ruling.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Then what happened, Mr. O'Brien?

A. I proceeded then to distribute leaflets. I went to a point on the curb where there were policemen about three feet abreast. I had the leaflets in my hand and started to distribute the leaflets. I think I got rid of around—it is possible I got rid of twenty leaflets. I had passed three police who were in doubt as to what to do; two started for me and changed their minds. When I got by the fourth of this cordon of police I was aware that they all were in back of me or near me and two of them directly upon me, hovering over me, taking my leaflets from me in no gentle manner, and I was shunted then into a crowd of photographs and reporters from various newspapers. I still had some leaflets in my pocket and upon being asked by reporters to give them samples of these leaflets I was distributing. I pulled these leaflets out of my pocket and commenced to distribute them among the representatives of the press. While I was doing this then one or two of the policemen who had previously engaged in handling me and taking my leaflets from me, came in to the scene and wanted to know who it was that was distributing leaflets there, and at the same time a group of people dressed in civilian clothes—two I remember were carrying canes, some with banners and medals upon their lapels, making them representatives of, one I remember

particularly, the Jersey City Veterans' Committee—and in the confusion these people were apparently trying to single me out——

MR. HAMILL: Oh, I object to that, I object.

Q. Go ahead, Mr. O'Brien.

MR. HAMILL: Well, now, he will not go ahead until we get a ruling on that "apparently trying to single me out."

THE COURT: I rule in your favor.

MR. HAMILL: I don't want to interrupt his prepared speech, but I have got to do it where it is irrelevant.

Q. Will you proceed, Mr. O'Brien, after the Court's ruling.

A. Well, when I saw this group of people more or less —no less than fifteen or twenty, I think it was anyway——

MR. HAMILL: I object to what he thought. We want to know what he saw or did; we are not interested in his thoughts.

A. (Continuing.) I came to the conclusion it was time for me to leave.

MR. HAMILL: I object to what conclusion he came to, your Honor, please.

MR. FRAZER: He came to the conclusion it was time for him to leave.

MR. HAMILL: It must have been unerringly correct but, of course, it is irrelevant in this case.

Q. What did you do, Mr. O'Brien?

A. I left the scene of activity.

Q. Now, during the period that the officers were taking the circulars away from you by no gentle means, did they say anything, any remarks made or passed by the officers?

A. There was so much commotion or noise, I just know that they were demanding the leaflets from me.

MR. FRAZER: Cross-examine.

Q. Or, by the way, were you at the meeting of April 30th at Journal Square?

A. No, sir.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. The Catholic Worker is a New York publication, is it?

A. Yes, sir.

Q. Who are the officers of the Catholic Worker?

A. The editor is a Dorothy Day, the managing editor is Bill Callahan.

Q. Dorothy Day lives where?

A. At 115 Mott Street.

Q. Is she in New York—I am not interested in her exact address—I mean in New York?

A. Yes.

Q. And Bill Callahan is of New York?

A. Yes, sir.

Q. And what is your position with the Catholic Worker, you say?

A. I have charge of the Catholic Union of Unemployed; I am secretary.

Q. And you had charge of it then?

A. Yes, sir.

Q. And you have charge of it now?

A. Yes, sir.

Q. Now, you knew when you came here, Mr. O'Brien, that there was an ordinance against the distribution of literature, didn't you?

A. I knew one had existed in Jersey City.

Q. Well, now, didn't you know on that date that there was an ordinance against the distribution of literature?

THE COURT: Well, might I correct you, Mr. Hamill? An ordinance which was interpreted to be against the distribution of literature,

MR. HAMILL: Well, now, just let us read that ordinance.

THE COURT: We are not going to argue legal questions.

MR. HAMILL: I mean your Honor has said that.

MR. FRAZER: May I call your Honor's attention to the fact that this date was May 7th, that counsel for the defendants have already conceded that on May 7th, after the Griffin decision, the ordinance as to this feature was unconstitutional.

MR. HAMILL: You are absolutely correct, sir, and I shall not—I had not the date in mind and I shall not pursue that line of questioning further.

Q. It was on May 7th, was it?

A. May 7th; yes, sir.

Q. There were thousands of people there, were there, Mr. O'Brien?

A. Yes, sir.

Q. There was a tremendous gathering there?

A. A tremendous gathering.

Q. A man would get hurt there even by the mere attempt to circulate through the crowd, wouldn't he?

A. I wouldn't know about that.

Q. Did you ever come to Jersey City before to distribute literature?

A. No, sir.

Q. And what caused you to come there on that night?

A. Because it was part of the activities of the organization I am connected with.

Q. To distribute literature on that night?

A. On that night, as in hundreds of other occasions.

Q. Why did you pick out that particular occasion, that is, the night of May 7th, when you knew there was a tremendous meeting there?

A. Well, our work is general in that line; we don't specify places and dates where we feel the need——

Q. But who—excuse me, had you finished your answer?

MR. FRAZER: He had not.

A. I hadn't, give me a chance.

Q. Why did you pick out that particular night of all nights?

A. Because as a Catholic organization we had a message we wanted especially to bring to Catholics and all people interested in civil liberties in Jersey City and Hudson County.

Q. Then it wasn't because you wanted to disobey any laws?

A. We don't go to disobey laws.

Q. Or any ordinances?

A. That's right.

Q. You just happened to come there that night and you found an enormous meeting there?

A. We just didn't happen to come there, we prepared to come.

Q. And you weren't aware that it was unlawful to do it?

A. We were aware that it was lawful.

Q. Oh, and——

MR. FRAZER: Counsel has already conceded its lawfulness. I cannot see the reason for pressing the point.

Q. And you were prevented from distributing the circulars?

A. Yes, sir.

Q. On that night?

A. Yes, sir.

Q. Your distributing them would have caused a great deal of confusion?

A. It did.

MR. FRAZER: I object.

Q. It did, yes. That's all.

Now, will you give me the office of—what's the name of that, the Catholic Worker?

A. Yes, sir.

Q. And where is their office?

A. At 115 Mott Street, New York City.

Q. 115 Mott Street. And who is the president of it?

A. The editor is Dorothy Day.

Q. Dorothy Day. And who is the owner of it?

A. The founders are the owners.

Q. Well, who are they?

A. Or they are not necessarily owners; it is maintained by its contributors.

Q. Well, who are the founders?

A. Peter Maurin and Dorothy Day.

Q. Peter Maurin and who else?

A. And Dorothy Day.

Q. How long has the Catholic Worker been founded?

MR. FRAZER: Is this material or cross-examination, sir? I think I will object to it. I have been very patient but I now object.

THE COURT: I will allow it.

MR. HAMILL: He says he came there as a representative of a certain organization and that was carefully put in by counsel for the complainant.

THE COURT: Go ahead.

MR. HAMILL: Now, I want to know what this organization is.

THE COURT: Certainly, I am going to allow you to know. I would like to know myself. So go ahead.

Q. How long has the Catholic Worker been founded?

A. It has been functioning a little over five years.

Q. A little over five years. Have you ever distributed it or sold it in Jersey City?

A. No, not myself.

Q. Well, has it ever circulated to your knowledge in Jersey?

A. We have a monthly mailing circulation here; it has been circulated and sold and distributed on the streets of Journal Square and elsewhere in Jersey City and at meetings throughout Hudson County and some places in Union City and Jersey City.

Q. And how long have you been connected with it?

A. Nine months.

Q. Since when, I mean nine——

MR. FRAZER: Merely a matter of mathematics.

MR. HAMILL: Well, I know, if we only knew where to start, nine months in the past from today?

THE WITNESS: Yes.

Q. And that was in what month?

A. Well, to be actively connected with it I think it was in September of last year or the latter part of August.

Q. In the latter part of August, 1937; what did you do before that?

MR. FRAZER: I object, going further into the personal history of this witness.

THE COURT: What is the purpose of that, Mr. Hamill?

Q. Who was it who employed you?

A. The staff of the paper.

Q. Are you a newspaper man?

THE WITNESS: Do I have to answer that?

THE COURT: Yes, there is no objection to answering that.

Q. I say are you?

A. No.

Q. I mean did you ever do the work of a newspaper man like reporting——

MR. FRAZER: Now, I object.

Q. (Continuing.) —cases or writing articles?

MR. FRAZER: I object. This has no relevancy to the case. It is not cross-examination. It does not test his credibility or do anything else. It is merely wasting the time of the Court. It is badgering a witness just for the sake of badgering; I object to further going on.

MR. HAMILL: No, it is unmasking a scheme put in for an evident purpose. Now, let's be perfectly honest with each other.

MR. FRAZER: May counsel state the scheme then?

THE COURT: State the scheme.

MR. HAMILL: I will state the scheme. It gives me a magnificent opportunity. It is the same scheme that counsel wanted to put in when they would have the Court ask the questions about race and religion. Now, state the scheme. Let us be perfectly clear with each other. Let us deal with our hands on the table and not dealing from the bottom of the deck. Here is the scheme. The scheme is to show that——

MR. FRAZER: May I ask——

MR. HAMILL: —these men——

MR. FRAZER: —if he is addressing the Court?

THE COURT: Mr. Hamill, would you care to address me?

MR. HAMILL: I beg your Honor's pardon, if by inadvertence I turned. It is to have the Court hold that these men could not be Communists and could not be

opposed to Hague because they are Democrats, New Deal Democrats and Catholics. Now, there is no deceit about that and there need not be. Now, that is the scheme and we will pin it on you before this trial is over.

MR. FRAZER: May I say to the Court that I think it was the Court that injected——

THE COURT: Mr. Hamill, I asked you if your defense was, or a defense was that these unions were Communistic?

MR. HAMILL: We will show——

THE COURT: Wait a minute, let me say right now that I think it would be a most useful thing to have exploited under sworn testimony the exact nature of these plaintiffs and I shall be glad to insist that under oath witnesses be called on that point.

MR. HAMILL: I will——

THE COURT: Because—wait a minute—because it would seem to me that once for all, not only as a matter of this case but as a matter of the general welfare of the United States it be determined on the sworn testimony, the exact nature of these unions from both sides.

MR. HAMILL: And of the purpose behind this whole movement. And I promise your Honor it will be done in accordance with your Honor's wishes and in full measure for the benefit not only of enabling your Honor to arrive at a correct decision but as your Honor suggested, for the benefit of the United States.

MR. FRAZER: Now may I say that this witness was called to the stand for the purpose of testifying to some facts; that he is not a party to the complaint, that he is not associated in any way with any of the plaintiffs, that he is merely here for the purpose of testifying to the facts, which he has done. He has been submitted to a rigorous cross-examination as to his personal

position and so on, and I think it is time that that type of examination should stop.

MR. HAMILL: That is all.

MR. FRAZER: That is all.

(Witness excused.)

JOSEPH ZARRELLA, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

THE CLERK: Zarella? Is that right?

THE WITNESS: No, Z-a-r-r-e-l-l-a.

MR. HAMILL: Give us your full name, please.

THE CLERK: What is your address?

THE WITNESS: 115 Mott Street.

THE CLERK: New York?

THE WITNESS: New York City.

MR. HAMILL: I want to get the name and address.

THE CLERK: 115 Mott Street, New York; Joseph Zarrella.

MR. HAMILL: Now, I notice right at this point that the other gentleman, the other gentleman's address is 115 Mott Street. Is that the headquarters of the paper?

MR. FRAZER: Yes, that is right.

THE WITNESS: That is the headquarters, and we live there, too.

MR. HAMILL: You have your own residence there, too?

THE WITNESS: That is right.

MR. HAMILL: I mean your apartment there, you live there?

THE WITNESS: That is right.

MR. HAMILL: You know what I mean by living; you have your home there?

MR. FRAZER: He has said so.

THE WITNESS: Yes, I know.

MR. HAMILL: Yes, all right. I mean it is not merely a mailing address; it is your home address?

THE WITNESS: My home address and my business address.

MR. HAMILL: All right.

Q. Mr. Zarrella, what is your connection with the Catholic Worker?

A. I am a member of the establishment.

Q. And on the occasion of May 7, in the company of Mr. O'Brien and Mr.——

A. Callahan.

Q. Mr. Callahan, you came to Journal Square, is that right?

A. That is right.

Q. Will you state what you saw, what happened to you, on that evening?

A. Well, we arrived at Journal Square at seven thirty that evening May 7th, and we walked about a block and a half, when we decided to distribute literature. Mr. Callahan had given out about three or four pieces of literature, and then I proceeded to give out the literature.

Q. Literature such as this, which is marked in evidence Exhibit P-7?

A. That is right. We had not been distributing the literature more than a minute when two cops came upon us

and tried to take from us forcibly the leaflets which we were giving out. As we held on to our leaflets, we said that we were within our constitutional rights of distributing these leaflets. We also quoted the supreme law, Supreme Court ruling, about no state, city or county had the right to prevent any citizen from distributing literature; and with that, we kept tusseling with the papers back and forth, finally he asked me my name and I told him that he had no right—I wouldn't give him my name or where I came from unless he arrested me. After they had taken the leaflets from us, this one policeman had grabbed Mr. Callahan and myself by the arm and proceeded to take us to the patrol wagon, and at that, he called to Chief of Police Walsh and asked if he could take us to the patrol wagon, and the Commissioner said no, he should let us go, just take——

Q. You mean Commissioner or Chief?

A. Well,——

Q. The Chief?

A. The Chief, Chief of Police. He said that he should let us go, just keep our leaflets.

Q. Now I show you a clipping, Sunday *News* of May 8th, 1938, and call your attention to the two pictures there. Do they fairly portray the conditions as you found them that night?

A. Well, it does. This was after we were taken off the sidewalk and were brought out into the street.

Q. Does the lower picture show you or anybody with you?

MR. HAMILL: I object.

A. Yes.

MR. HAMILL: I object to any discussion about the contents of the document.

A. (Continuing.) This picture here——

MR. HAMILL: Now wait until we get a ruling.

THE COURT: May I see it (handed to the Court). I don't believe, Dean Frazer, that is admissible.

MR. FRAZER: Well, for the purpose of the record, I would like to make the offer, sir.

THE COURT: Yes.

MR. FRAZER: I am offering a newspaper picture from the Sunday *News* of New York, May 8, 1938, showing conditions which the witness has stated faithfully portray the conditions at Journal Square on the evening of May 7, 1938.

MR. HAMILL: And, of course, I object.

THE COURT: It has various legends on it.

MR. HAMILL: He might as well—I object.

MR. FRAZER: And the lower one of which I wish to say in my offer I am putting in because it contains a picture of the witness Zarrella. If it be on account of the legend that the offer here is excluded, I will be willing to substitute another copy.

MR. HAMILL: No, it is——

MR. FRAZER: I make that offer.

MR. HAMILL: And I object. It is clear to anyone, particularly to Dean Frazer, that a man can't go on a witness stand and then say after giving us testimony, "And there is my photograph," put that in the record too, any more than he could put a plan that he has drawn of a certain situation.

MR. FRAZER: That has been done, sir.

MR. HAMILL: It has been used as pictorial testimony for the purposes of illustration, but it has never been allowed in the record except when the picture or plan is itself in issue. Now, you know that is the rule.

MR. FRAZER: I didn't know it.

MR. HAMILL: Oh, yes.

MR. FRAZER: I have had occasion to use photographs a number of times.

THE COURT: Take the legend off and mark it for identification.

MR. HAMILL: Any more than you can take a blackboard on which you draw a plan to illustrate the testimony—take the blackboard drawing and put it in evidence and send it into the jury.

THE COURT: I will look up the law.

MR. HAMILL: Your Honor knows the law.

MR. FRAZER: That is for identification.

THE COURT: I wish I did.

MR. FRAZER: It is P-8 for identification, I think, Mr. Reilly.

DEPUTY CLERK REILLY: Yes.

(Marked Exhibit P-8 for identification.)

Q. Mr. Zarrella, what happened to you after that, or what else did you see if anything of interest?

A. Well, after that incident we decided to walk around Journal Square. We proceeded to walk, and after walking a few blocks, we noticed a man in a light gray suit—he was about five six and a half—following us. We thought it quite amusing at the moment, and we proceeded to walk around and stop and drop in stores and look out the window to see if this fellow was still following us. Well, then we stopped in one drug store, made a telephone call, and then came out, and we all stood and looked at this fellow, and one of us pointed to him, and from that point on he just disappeared in the crowd. After that we decided that the streets were terribly crowded. We went into a restaurant and waited until Jerry O'Connell came, and in the meanwhile we proceeded to have some coffee. While we were in the restaurant Mr. O'Brien left us, and went out to dis-

ribute literature What we know of his incident was what e related to us.

Q. All right then, don't say it now. What did you do?

A. And after Mr. O'Brien came back we sat around for while. It was getting late, and we figured that Mr. O'Connell wasn't coming. We walked around the Square once more, stayed in the Hudson Tube Terminal, the station here, for a while, and watched the demonstration from one of the windows, and then from that point on we proceeded to go home.

MR. FRAZER: Cross-examine.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. How long have you been connected with the—what is it?—the Catholic Worker?

A. That is right.

Q. How long have you been connected with it?

A. Officially I have been connected with the Catholic Worker about—I will be connected a year June 15th. I had been interested in the Catholic Worker for two years. I had quit my job a year ago June 15th to come down and live here and work with them.

Q. What was your job?

A. I worked for the president of the International Hydro-electric System, which is a subsidiary of the International Paper Company in the News Building.

Q. In New York?

A. New York, 220 East 42nd Street.

MR. HAMILL: That is all.

MR. FRAZER: That is all, thank you.

(Witness excused.)

WILLIAM CALLAHAN, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: And the address?

THE WITNESS: 115 Mott Street, New York City.

THE CLERK: 115 Mott Street.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Callahan, you are connected with the Catholic Worker?

A. In the capacity of managing editor.

Q. And did you have occasion to go to Jersey City, Journal Square, on the evening of April 30, 1938?

A. I did.

Q. And will you say what you saw there on that occasion?

A. Well, I went to Journal Square to act specifically as an observer. Knowing that Mr. Thomas was scheduled to speak or had announced that he would speak, I went to observe for myself and to see, much as Father Kernan did, whether those things could happen in the United States or not. I waited around the Square for some time. Mr. Thomas did not show up on schedule. When he did come into the Square the roadster in which he was riding came up to the exact point where he said he would speak. Mr. Thomas did not even have a chance to rise. He was dragged from the car and shoved around the corner into another waiting car, a sedan. From that point on I no longer saw him except later on in the evening at his house.

Q. Did you see any efforts made that evening for the distribution of circulars by anyone?

A. Yes, I did. After the Thomas incident. I was on my way down to the police station to find out what happened to Mr. Thomas. On the way I was with a small group, one of whom was Morris Milgram. Mr. Milgram attempted to hand out leaflets, I don't know the nature of them, and

the patrolman stopped him and insisted that he give up the leaflets.

Mr. Milgram told him he was acting within his constitutional rights——

MR. HAMILL: Never mind what Mr. Milgram told him.

Q. Go ahead.

MR. FRAZER: That is part of the scene.

MR. HAMILL: No, it isn't; no, it isn't part of the scene, the statement of another man not in the presence of defendants, where they would have an opportunity to answer it.

Q. Go ahead, Mr. Callahan.

A. However, standing off a few feet was a police sergeant. Milgram demanded that the policeman take him to the police sergeant——

MR. HAMILL: I object. I object to what Milgram demanded.

THE COURT: Sustained.

MR. FRAZER: Now, if it please the Court——

MR. HAMILL: I object to what Milgram demanded, if your Honor please.

MR. FRAZER: This is a statement made to one of the agents of the defendants.

MR. HAMILL: No, it was not.

MR. FRAZER: And as such is made in the presence of the defendants.

MR. HAMILL: Unless you show——

MR. FRAZER: He was a police officer.

MR. HAMILL: Unless you will show that he was authorized to receive it, if he was an agent. Then you

must first prove the extent of his agency. I think that is good law.

THE COURT: Read the question.

(Pending question and answer read.)

THE COURT: We have had that all, Dean Frazer.

MR. FRAZER: Yes.

THE COURT: Sustained.

A. (Continuing.) When the policeman brought Milgram to the sergeant, the sergeant told the policeman to let him go.

Q. That was the extent of the disorder which you saw specifically that night or——

A. That was the extent of the disorder. I was standing right next to Mr. Thomas' car, right against the front left fender, he was taken out—or rather right fender—he was taken out of the right side of the car.

Q. Now there were a great many people in the Square that evening?

A. There was a pretty big crowd.

Q. Turning from April 30th to May the 7th, were you in Jersey City with Mr. O'Brien and Mr. Zarrella?

A. I was.

Q. And will you tell what happened then?

A. We went over to Jersey City for the specific purpose of handing out literature and our reason for handing out——

MR. HAMILL: No, never mind your reason.

THE WITNESS: Very good.

Q. Just state briefly what happened, will you?

A. We went out to Journal Square and we walked half way down the Square, carrying some leaflets in our hands and some in our pockets. At a certain point a fellow, who I knew, came along and asked me for one of the leaflets, and

I decided that was as good a point as any to start giving them out.

MR. HAMILL: Never mind what he decided, if your Honor please. What did he do?

A. I started to hand out leaflets. I disposed of three or four, when I saw that Mr. Zarrella was doing the same thing, and I saw these policemen come upon us, two of them. I protested to the policeman when he seized the leaflets from my left hand coat pocket. I didn't let go immediately of the ones that were in my hands. I protested to him, told him of the Supreme Court ruling rendering such an ordinance unconstitutional and told him that I would not give up my leaflets unless I was arrested, that they were my private property. A police officer was standing a few yards away. I recognized him by the fact that he had a gold badge instead of a silver one; and I demanded that the policeman bring us over to him so that we could protest.

We did that and he merely snarled "Take them away from them," which they did. I asked him his name and he said it was Chief of Police Walsh. The policeman seizing the two of us by the arms started across the street with us and said to the Chief of Police, "Shall I take them in?"

He said, "No, let them go."

Q. By the way, what did the policeman who took the circulars do with the circulars?

A. How he disposed of them I have no means of knowing. He took them across the street and I lost him in the crowd.

CROSS-EXAMINATION.

By MR. HAMILL:

Q. How long have you been connected with the Catholic Worker?

A. Approximately four years.

Q. And you are the managing editor, are you, Mr. Callahan?

A. I am.

Q. Do you know Mr. Norman Thomas personally?

A. I did not know him personally until that night.

Q. Well, have you ever met him at all?

A. I met him that night after he had been deported from Jersey City, I went to his house.

Q. In New York?

A. In New York.

Q. Why did you go to his house?

A. In a reportorial capacity.

Q. To get from Mr. Thomas his——

A. His side of the story.

Q. —side of the story.

A. And also to tell him if he should need a witness to it I was willing to act as one.

Q. All right, I think that's all, Mr. Callahan.

MR. FRAZER: That's all, Mr. Callahan. Thank you.

Is Mr. Francis Hunter here?

MR. HAMILL: If it isn't waking up old questions look at the artfulness and injustice of what counsel wanted to put in the record with this picture.

THE COURT: I didn't admit it so——

FRANCIS HUNTER, called and sworn on behalf of the plaintiffs, testified as follows:

(Address 155 Magnolia Avenue, Jersey City.)

DIRECT EXAMINATION.

By MR. FRAZER:

MR. FRAZER: Might I substitute for Exhibit P-8 for identification a copy which has merely the lower picture in it?

MR. HAMILL: That is for identification?

MR. FRAZER: Yes.

THE COURT: There are some legends still on it.

MR. FRAZER: Are there legends on that? You mean newspaper legends?

THE COURT: Yes.

MR. FRAZER: I thought you meant the writing. We will take the legends off.

MR. HAMILL: It is all merely for identification.

MR. FRAZER: Might I, for the purpose of identification, merely ask Mr. Zarrella whether the photograph here shown is that of himself?

MR. HAMILL: I object to that.

MR. FRAZER: Otherwise the picture has no significance.

MR. HAMILL: Right, the picture has no significance. And then you want Mr. Zarrella to say, "That is my picture." You are something like the boy who drew the picture of the animal and under it put "This is a horse." You want Mr. Zarrella to say that's his picture.

MR. FRAZER: Yes, I want him to say it is.

MR. HAMILL: It may be your or my picture.

MR. FRAZER: I will put it his way: Whose picture is this in shirtsleeves?

MR. HAMILL: Let me know any man on any basis of reason who could tell with that outline.

MR. FRAZER: May I ask that question, sir?

JOSEPH ZARRELLA, recalled.

MR. HAMILL: I object to asking it.

By MR. FRAZER:

Q. Can you tell me whose picture it is of the man in sweater or shirtsleeves back of the two officers?

A. That is a picture of me.

MR. HAMILL: I object to the characterization even; the picture doesn't show whether it is a sweater or shirtsleeves.

THE WITNESS: It is a gray sweater.

MR. HAMILL: It is a white blotch.

THE WITNESS: I had a gray sweater, I was wearing a white short similar to the one I am wearing at the present moment. I had a gray pair of pants and brown shoes. This cop here is the one that took the leaflets away from Mr. Callahan and this one is the one that took the leaflets away from me.

Q. That is the one in the background?
A. In the background.

MR. HAMILL: Now, since this is a fair sample of the evidence, I ask the Court if he would look at that and see if he would pick out those things as he has identified them.

MR. FRAZER: Will you mark it now without the etiquette, as P-8 for identification.

THE COURT: I haven't admitted it. Go ahead, Dean Frazer.

FRANCIS HUNTER, resumed.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Hunter, what is your business?

A. I am executive secretary for Local 16 of the Industrial Union Marine and Shipbuilding Workers of America.

Q. Affiliated with the CIO?

A. They are a CIO affiliate, yes, sir.

Q. And in your capacity have you had occasion to have meetings of your Union anywhere in Jersey City?

A. Yes, sir, for a period of about seven or eight months we met at 160 Mercer Street, Jersey City, a place known as Peoples Center.

Q. And did you always meet alone or on occasion with other unions?

A. Occasionally we had what we called open nights where the Local membership and any outsiders would be invited to listen to any speaker we would have present.

Q. Now, will you state what kind of a meeting—was there a meeting arranged for for December , 1937?

A. Yes, it was some time during the month of November when I was contacted by the Regional Director of the CIO and asked if it would be all right for us to conduct a joint meeting. He knew of our open meetings and he said it would be fine if the regional office and your local would get together for a mass meeting. I thought it would be all right and I agreed to it and arrangements was made for the mass meeting for December the 3rd.

Q. Whereabouts?

A. At 160 Mercer Street, Peoples Center.

Q. And did you contract for the meeting place that night?

A. The Local had already contracted for that place for as many meetings as they wished. We rented the place by the month.

Q. Now, will you tell me what happened in regard to that meeting?

A. Well, I believe it was one or two days prior to the meeting——

MR. GLAVIN: I object to what he believes.

MR. FRAZER: That is an approximation.

MR. GLAVIN: You know it and I don't.

MR. FRAZER: Well, when he says "I believe it was one or two days" that means approximately two days.

MR. GLAVIN: Suppose you let him tell it without "believing."

Q. Omit the word "believe," will you?

A. Approximately one or two days before the meeting I received word from the people at Peoples Center that the meeting would have to be called off and I wanted to know why, and they said that the police——

MR. GLAVIN: Just a minute, I object to what they said.

THE COURT: When you say the people——

THE WITNESS: The manager up there at the Peoples Center.

THE COURT: What is his name?

THE WITNESS: It is big name, I couldn't tell you, I never could say the man's name. He is a Ukrainian. It is one of those names you have to stumble all over when you try to say it.

THE COURT: Could you get us his name?

THE WITNESS: I can, from my records. I would rather write it down than say it.

Q. Will you do that later for us and submit it?

A. I will do that, yes.

Q. Thank you, Mr. Hunter. Now, the gentleman with the unprounceable name did what in regard to the meeting?

A. The manager of the hall, we called him, he told me——

MR. GLAVIN: Just a minute, I object to what the manager told him.

THE COURT: Did he cancel your meeting?

THE WITNESS: He cancelled our meeting. He told me the meeting was off.

Q. Did he assign any reason?

MR. GLAVIN: I object to any reason. He can bring the man in here and he can testify himself. It is purely hearsay. It certainly cannot bind these defendants.

THE COURT: We are going to bring him in.

Q. Did he assign any reason?

MR. GLAVIN: I object to his testifying to what reason he assigned.

THE COURT: Sustained.

MR. FRAZER: May I state to the court I am not asking what the reason was. Did he assign any reason.

THE COURT: I beg pardon, that is my misunderstanding. Did he?

THE WITNESS: Yes, he did.

MR. FRAZER: Now, I would like to ask the question that will probably be objected to.

Q. What was the reason assigned?

MR. GLAVIN: I object on the ground it is purely hearsay and cannot bind these defendants.

THE COURT: Sustained.

MR. FRAZER: Exception.

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

Q. Now, what has been your experience about getting other halls since then?

A. Well, it seems as if, no matter where I go——

MR. GLAVIN: I object to what it seems as though. State facts.

A. I went to several places and when I told them who I represented——

MR. GLAVIN: Just a minute, I object to this general testimony. If he went to a specific place let him testify where, who he saw and what happened.

THE COURT: Can you do that?

A. Not offhand I can't.

MR. GLAVIN: Then I object to his testifying along that line.

Q. You have gone, have you, to other halls?

A. I have.

Q. Have you succeeded in getting them?

MR. GLAVIN: I object.

A. Only one.

MR. GLAVIN: On the ground it is immaterial.

Q. What was that?

A. A church.

MR. GLAVIN: Just a moment. Do you concede my right to make an objection?

MR. FRAZER: Oh, yes, go ahead, Mr. Glavin.

MR. GLAVIN: I object to his testifying to any conversations or any activities unless he can specify the hall, the person that he spoke to and what happened.

THE COURT: As I understood him, he was about to specify a church. Go ahead.

A. All right. I did contact Dr. Hollingshead of the Good Will Industries Organization and asked him if he would let us use the hall where they held a Norman Thomas meeting. He agreed that we could use that hall and we used that hall for a short period of time but it was small, inadequate and then we had to leave there. Since we left that place we have been meeting in Newark on Plane Street.

Q. Have you been able to get any halls in Jersey City since this December 3rd meeting?

A. No.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. You say you are regional director of what?

A. I am not a regional director; I am executive secretary of a Local union.

Q. What is the name of it?

A. Local 16, Industrial Union of Marine and Shipbuilding Workers of America.

Q. Is your Union out on strike now?

A. No, sir.

Q. Were they out on a one-day sit-down strike yesterday?

A. No, sir.

Q. You are affiliated with the CIO, aren't you?

A. Yes, sir.

Q. Weren't all the CIO unions out on a one-day sit-down strike yesterday?

A. No, sir.

Q. Do you read the papers?

A. Yes, sir, I know what you are referring to, sir.

Q. What's that?

A. I know what you are talking about, sir, but you don't.

Q. Don't you belong to that branch?

A. No, sir.

Q. Of the CIO?

A. No, sir.

Q. You don't belong to that branch?

A. No, sir.

Q. How long have you been executive secretary of Local 16 of the Industrial Union of Marine Workers?

A. Since March 22, 1937.

Q. Is that when you moved to Jersey City?

A. Yes, sir.

Q. Where did you live before that?

A. Camden, New Jersey.

Q. Did you belong to any Union in Camden?

A. I did.

Q. What Union?

A. I belonged to Local 1 of the Industrial Union of Marine and Shipbuilding Workers of America.

Q. Why did you come to Jersey City?

MR. FRAZER: I object.

THE COURT: Let him answer. Go ahead.

A. Local 16 needed a man of my experience and that is why I came up here, to assist the Local boys.

Q. Were you directed by anyone connected with the CIO to come to Jersey City?

A. No, sir.

Q. You just came of your own accord?

A. No, I came at the request of the Local executive board.

Q. Who is the Local executive board?

A. Well, they are a whole list of names—if you want to take them all down——

Q. Well, who on the board requested you to come to Jersey City?

MR. FRAZER: Now, I object, sir, this is getting into pure folly.

THE COURT: I think myself it is but go ahead.

A. Daniel Deans, president; George Redpath, vice-president; Carl Neugebauer, recording secretary of the Local; Daniel Mulhern, trustee; William Sallus, trustee; James Neville, trustee; the Shop Stewards and members of the executive board are as follows—I will try to give them as I recall them from memory.

Q. That's all I want to know about it. Where do you hold your meetings?

A. Our Local office is 588 West Side Avenue; the executive board meetings are held there. General membership meetings are held at 295 Plane Street, Newark.

Q. What were your instructions when you were told to go to Jersey City?

A. Merely to act in the capacity as executive secretary, to attempt to get the Local office functioning in a business-like manner and to act as a representative of the Local in adjusting grievances between the company and the Union, any member of the Union.

Q. Did you know anything about the ordinance in Jersey City prohibiting the holding of public meetings in public places without a permit?

A. I know nothing about public meetings, I had nothing to do with public meetings.

MR. FRAZER: I object. He said nothing about——

THE COURT: I thought he was talking about private meetings.

MR. FRAZER: No, he is talking about public meetings now.

MR. GLAVIN: I am just trying to show the purpose for which this man was sent to Jersey City the same as the rest of the people who came in around March, 1937.

THE COURT: He told you what his purpose was and he gave you the names of the executive committee.

MR. GLAVIN: I am not satisfied that is the purpose; I am trying to find out.

THE COURT: Then you can call the other members of the executive committee.

A. I will be glad to give a more accurate reason if they want it.

THE COURT: Go ahead.

A. (Continuing.) Local 16 was a new Local in our organization. The Local men up here had no experience at all in conducting an organization. The Local men knew nothing of parliamentary procedure, didn't know how to keep the records in the office; they only had one young girl 19 years of age in the office trying to do that work. The thing was in sort of a half—well, it was sort of a mixed-up affair. The records were several months behind in date, and more than that the Local negotiating committee had had difficulty in getting along with the Industrial relations manager of

the company, which the employees of that company are members of our Union, and they felt as though they needed someone else who had a little more experience to come up there and help them get started until such time as they could train a local man for that particular work. At that particular time I was president of Local No. 1.

MR. GLAVIN: If this is for my benefit I submit to the court that I am not interested.

THE COURT: I thought you asked for his reasons more specifically.

MR. GLAVIN: I wanted to bring out his reasons in my own way by questions.

MR. FRAZER: He asked the question. I would now like the witness to complete his answer.

THE COURT: He may answer.

MR. GLAVIN: If you want the answer, it is all right with me.

MR. FRAZER: I don't want the answer, I want his reply.

A. (Continuing.) I resigned as president of Local 1 and came to Jersey City and acted as executive secretary for Local 16. I attempted to adjust grievances that could not be adjusted between the Shop Stewards and the Local grievance committee of the Union and the Industrial relations manager. I acted in that capacity up until the present time, carrying on the ordinary business of the Local, getting the Local office into first-class shape, getting the records up to date and taking up all grievances that cannot be adjusted by the Local committee with the Industrial relations manager or the president of the company, and that is what I have been doing up to the present time.

Q. All right. And were you subpoenaed here as a witness?

A. I was called yesterday and asked to come over here today.

Q. To whom did you tell your story so that they might call you here as a witness?

MR. FRAZER: I object.

THE COURT: What is the purpose of that?

MR. GLAVIN: Just to find out why he is here, what the purpose of bringing him here is. He must have told somebody.

MR. FRAZER: If you want to learn whether he has discussed this matter with counsel, he did.

MR. GLAVIN: I don't want you to testify to it, no; I want him to testify to it.

THE WITNESS: I have no objection to answering.

A. (Continuing.) The CIO and myself, that is, Mr. Carney, regional director of the CIO and myself arranged for the June 3rd meeting, which failed to come off, and Mr. Carney asked me if I would come over to testify to that fact, and I agreed to do that, that's all.

Q. That's all.

By MR. FRAZER:

Q. On December 3rd, you meant. That was the December 3rd meeting? You said June 3rd. I think it was by inadvertence.

A. No, the December 3rd meeting.

By MR. FRAZER:

Q. Now, where are the majority of your union members located?

A. They are pretty well scattered. According to a check-up we made recently, about 50 per cent. of our members reside in Jersey City; the other 50 per cent. is pretty well scattered; I would say about 30 per cent. in Newark

and then the rest of them is scattered throughout the outlying districts.

Q. In the period during which you have been representing the union, have you had any strikes?

A. Yes, sir—not since I have been representing the union, no.

Q. That is what I mean.

A. No, not since I have been representing the union.

Q. Your disputes have been settled?

A. Yes, sir.

MR. FRAZER: That is all.

MR. HAMILL: That is all.

(Witness excused.)

THOMAS HURLEY, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: Where do you live, Mr. Hurley?

THE WITNESS: 173 Bleecker Street in Jersey City.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Hurley, you are a——

THE CLERK: Thomas Hurley, 173 Bleecker Street, Jersey City.

Q. Mr. Hurley, I show you a card; have you seen it before?

A. Yes, sir.

Q. Ever have one in your possession before?

A. Yes, sir.

Q. Where did you get it?

A. From a boy at the Five Corners, Jersey City.

Q. Under what circumstances did you get it?

MR. GLAVIN: Oh, I object to it unless we find out what it is.

THE COURT: Let's find out first who this young man is. I don't know who he is.

Q. Who are you, Mr. Hurley?
A. I am a citizen of Jersey City.

THE COURT: What is your business?

THE WITNESS: I am unemployed.

Q. Now will you tell us the circumstances under which you got that card?

MR. GLAVIN: I object to the circumstances under which he got the card unless we know what the card is.

THE COURT: Let me see the card (handing to the court).

MR. FRAZER: I understood from Mr. Hamill that the contents of cards were not material.

MR. GLAVIN: No, but you are going to try to get them in.

THE COURT: Well, I will make the same ruling with respect to this card that I did before. It seems to me this must be rebuttal testimony.

MR. FRAZER: I want to show discrimination, sir; which I think is part of my case in chief. I want to show that these other circulars were received and these circulars were permitted, and the circumstances under which they were permitted. That is the purpose of my offer.

THE COURT: This isn't a circular.

MR. FRAZER: Well, it is printed matter.

THE COURT: Let me ask, just before saying what is on the card, Mr. Hurley, how did you receive it?

THE WITNESS: From a boy.

THE COURT: Where?

THE WITNESS: At the Five Corners, Jersey City.

THE COURT: You mean on the street?

THE WITNESS: Yes.

THE COURT: Handed to you, was it?

THE WITNESS: Yes, sir.

THE COURT: Do you know who the boy was?

THE WITNESS: No, I do not.

THE COURT: Were there any police officers present?

MR. GLAVIN: Of course I object; with all due respect, I object to the Court's interrogating him about this card.

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

THE COURT: Were there any police officers present?

THE WITNESS: There was one stationed directly opposite, on the other corner there, directing traffic, in the booth.

THE COURT: Did he see this card handed to you?

THE WITNESS: No, I doubt whether he did.

THE COURT: I don't think it is admissible. Exception.

MR. FRAZER: Wait a minute. I haven't finished my examination.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

Q. Do you know where the boy got the card from?

MR. GLAVIN: Oh, I object to that. It is merely hearsay.

MR. FRAZER: No, it isn't.

THE WITNESS: I seen it.

Q. You saw it?
A. Yes.
Q. Now where did you get it?
A. About eleven o'clock that morning——

MR. GLAVIN: Just a minute. I object to this question on the ground that it can't in any way bind these defendants, what the boy did at Journal Square or any place else, unless it was in the presence of them, or unless it can be shown that they gave him a permit to distribute these circulars.

THE COURT: Dean Frazer contends they were distributed without permit, in discrimination of your ordinance.

MR. GLAVIN: I know what he contends.

THE COURT: Now I am trying to find out if any police officers saw any of this distribution. If they didn't, I shall exclude it.

MR. FRAZER: What I want to prove is that an official of Jersey City directed this distribution.

MR. GLAVIN: I object to Dean Frazer testifying unless he is sworn.

MR, FRAZER: No, I am not testifying. I am making my offer, so that the Court——

THE COURT: Unless this witness saw such a circumstance.

Q. Did you see the circumstances under which the boy got the card?
A. I did.

Q. Now, will you state what those circumstances were?

MR. FRAZER: I haven't offered the card yet.

A. About eleven o'clock that morning I was getting back from New York City from looking for employment. I saw a man who I know to be Mr. Whalen, employed as a bus driver at Journal Square by the City or County.

MR. GLAVIN: I object to it on the ground that it certainly can't bind these defendants, any one employed by the county or even employed by Jersey City as a bus driver, unless it is shown that the defendants directed him to give out these circulars or they were given out with the defendants' permission.

THE WITNESS: I am coming to that.

THE COURT: Go ahead.

A. (Continuing.) This man Whalen had a bunch of boys around him, I should say from about twelve to fifteen years old, say about eight or ten boys, and he had a pile of these cards, and he gave each one of them so many, to go around and distribute them. He said, "Don't forget, and get rid of them."

So about half an hour after, I walked away from Journal Square going home, got to the Five Corners, and there was a couple of boys there handing them out; one boy handed me this one.

MR. FRAZER: Now, I would like to offer this card.

THE COURT: We will have to know more about Mr. Whalen. I will exclude it.

MR. GLAVIN: I move——

MR. FRAZER: May I have it marked for identification?

THE COURT: Yes, you may.

(Marked Exhibit P-9 for identification.)

MR. GLAVIN: I move that the testimony be stricken at this time from the record.

MR. FRAZER: I will ask an exception to the Court's ruling.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

MR. FRAZER: Cross-examine.

MR. GLAVIN: No cross-examination.

MR. FRAZER: All right.

(Witness excused.)

THOMAS COMETA, called and sworn on behalf of the plaintiffs, testified as follows:

THE CLERK: And where do you live?

THE WITNESS: 15 Searl, Pittston, Pennsylvania.

THE CLERK: 15 Searl Street, Pittston, Pennsylvania?

THE WITNESS: Yes, sir.

THE COURT: A little louder, please.

THE CLERK: Thomas Cometa, 15 Searl Street, Pittston, Pennsylvania.

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Cometa, what is your business?

A. I am a CIO field representative since June 1936.

Q. And are you engaged in this section of the country?

A. No, sir, I am working out of the southern end of New York State.

Q. Were you earlier?

A. Yes, sir.

Q. And when were you here in this section?

A. I was assigned here on May 10, 1937, and I was here up to December 10, 1937.

Q. Now do you remember opening up any headquarters for your organization in Jersey City?

A. Yes, sir.

Q. And whereabouts were those headquarters?

A. Academy Street.

Q. And where abouts—when did you open them?

A. The early part of October 1937.

MR. GLAVIN: I didn't get where he said they were.

THE REPORTER: Academy Street.

MR. FRAZER: Academy Street.

Q. 216 Academy Street, is that right?

A. That must be the number, but I am not positive. I don't remember the number.

Q. Now will you state what your experiences were after the opening of the offices in October?

MR. GLAVIN: Oh, I object to what his experiences were, unless they are directed to some particular activity.

Q. With officers of the law in relation to the activities of the CIO?

THE COURT: You may answer.

A. On October 28, 1937 we had arrangements made—that is, me and another field representative—to meet the management of the Standard Cap and Seal Corporation of New Jersey. We had a group of workers there that request organization, and after we got them signed up and we knew that we had the overwhelming majority of the plant as to bargain representation, we asked the management of this corporation for bargaining conference. The management agreed to meet the representative of the CIO, and a committee of the workers from the plant. That conference, like I just stated, was arranged for Thursday, October 28th, at one o'clock.

Thursday morning, October 28th, me and Samuel Macri, that were both assigned to this conference, went up to Jersey City. First we called at the office that we had established on Academy Street to hear reports from some of the workers from the American Home Product that is located too in Jersey City. We stood at the office there until about twelve thirty and we felt that in a half hour's time——

MR. GLAVIN: I object to what he felt.

THE COURT: Yes.

Q. What did you do?

A. Well at twelve thirty then, if that is the way you want it, we started out to go to this appointment with the management of the Standard Cap and Seal that is located on Bay Street, Jersey City; driving down, and we were close, one or two blocks, from Bay Street, Jersey City, an automobile pull up. The automobile was occupied by three; one was a sergeant in uniform, two in civilian clothes; and they hailed us to pull to the curb. I was setting alongside the driver, I don't even own an automobile, never did, I don't know how to drive one; the driver pulled to the curb and we stopped. The sergeant in uniform got over to the car, got around to the right side of the car, and asked us where we was going. No, rather, my mistake, "Where you from?" the sergeant said.

I said, "Newark, New Jersey."

He said, "What are you doing in New Jersey with a Pennsylvania license tags in the car?"

But before an answer was given to him he had, the sergeant had, already opend the door on the right side of the car and opened a little compartment in the dashboard. In the meantime, while this was taking place, the one plainclothesman, I figure, I am not sure——

MR. GLAVIN: I object to any plainclothesmen unless——

MR. FRAZER: The man in civilian costume.

MR. GLAVIN: I was just waiting until he got finished, because he hadn't said anything yet, to object and move to strike out his testimony unless he can identify the man who he says was a sergeant, either by name or badge number.

Q. Will you continue, Mr. Cometa?

THE COURT: Can you identify him?

THE WITNESS: Your Honor, the only identification that I have is that the car bore initial——

THE COURT: What was that?

THE WITNESS: MG, and I remember the license number was H-1618.

MR. GLAVIN: Well I think the Court will take judicial notice of the fact that MG licenses do not bear county initials, so he could not identify it by that number.

THE WITNESS: Well——

MR. GLAVIN: Just a minute. There is no question pending.

THE COURT: I thought MG—well I don't know what MG means.

MR. FRAZER: It means municipal government, I think.

THE COURT: What?

MR. FRAZER: Municipal government.

THE COURT: Municipal government, yes. Was he in uniform?

THE WITNESS: The sergeant, yes, sir. I recognized him because he had his chevrons, whatever you call them, on the arm.

THE COURT: Go ahead.

Q. Now, will you proceed?

A. Well——

MR. GLAVIN: Has the Court ruled on whether or not this testimony is competent?

THE COURT: I will allow it. You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

A. Like I was saying, the two gentlemen in civilian clothes, one stood on the curb, the other one came in from the left side of the car, while we were out, and searched the inside of the car, and pulled out the back seat and ramming the tools there and——

Q. That was the sergeant doing that?

A. I beg your pardon?

Q. That was the sergeant?

A. The sergeant, no, sir; the sergeant was looking in the compartment, that was on the dashboard, and he pulled papers there; one was the memorandum agreement that we had already drawn to be presented that day to the management of the Standard Cap and Seal, and there was there membership card, as we call them, CIO membership card, but blank, with no signature there. Well, the sergeant said, "Now I know who you people are."

I said, "Yes, sir, that is right."

I answered because I was on the right side of the car.

I says, "We are representative of the CIO, field representative."

"Well," he said, "what business have you got over here?"

I said, "We going on an appointment conference."

"An appointment conference?" he said.

I said, "Yes, sir."

Well, in the meantime he said, "Stand up."

Well then I stood up there and he searched me. Of course I didn't have no weapons of any kind. After he searched me he pushed me on the side and then he searched the driver. After he got through——

Q. Who was the driver?

A. Samuel Macri; he was the driver, and owner of the car, too. After he got through searching, he said, "Whereabouts this conference going to take place?"

I said, "On Bay Street at the company's plant. We are meeting the management in the plant."

"Well," he said, "let me warn you that if I catch you soliciting on the street for any organization; only God will help you."

I said, "Sir," and this is the truth, "I am not soliciting any place. Ever since I have been an organizer, this solicitation came from the workers themselves, and when the workers come and make requests for organization, then we cooperate as to their request."

We went up first to the Standard Cap and Seal plant. We met the management, and we stayed there until we got through the conference, which was about two thirty that afternoon. Then I returned to the headquarters in Newark.

Q. Now Mr. Cometa, before that episode, have you anything to say about the action of the police in regard to your headquarters?

A. When we established the headquarters in Academy Street, Jersey City, I noticed there that an automobile stood there and it was there in one spot every morning and every day that I happened to be there; this car was parked right at the intersection of Academy and Summit Street of Jersey City; and the car was parked so it was facing that office on Academy Street. I never saw a uniformed officer occupying the car, but I do——

MR. GLAVIN: One moment. I move that this testimony be stricken on the ground that it is immaterial.

THE COURT: Yes, unless he identifies them.

MR. FRAZER: Well, I want to see whether he doesn't. I think he is coming to it.

THE COURT: Strike it out anyway until he identifies them.

THE WITNESS: There was two gentlemen in civilian uniform there, and some time one. That took place all the time, and every day that I was in that office.

Q. Did you ever see those men in conjunction with any police operations?

MR. GLAVIN: I object to it on the ground that it is immaterial; there might have been a hundred cars around there, parked there, every day.

THE COURT: Did you get the number of that car?

THE WITNESS: Yes, sir.

THE COURT: What is it?

THE WITNESS: I have it right here (producing memorandum), because I made a memorandum. The car license was H-35427.

THE COURT: Well, unless the car is identified, which is easily done——

MR. GLAVIN: Well, assuming——

MR. FRAZER: I will call upon the defendant to admit that because if it be within their power and knowledge, they can admit—I will ask them——

MR. GLAVIN: Why don't you just ask to prove your whole case for you?

MR. FRAZER: Not at all. I think we have under the statute the right to call upon the opposing party to make certain admissions, to save us the proof, if it be within their power, and I would ask you to admit that car number H-35427 is a car belonging to the City of Jersey City.

MR. GLAVIN: In the first place you are asking an impossible admission. In the second place you are just wasting your time asking it, because I won't admit anything of the kind.

MR. FRAZER: Then we will have to bring the listed Jersey City cars here.

MR. GLAVIN: Well, bring it in, and I say to the Court that even if it was a police car and belonged to Jersey City, it had a perfect right to stand on the corner every day in the year, if it wanted to. What effect has that got or how is it material to the issue? After all, the police are entitled to patrol the streets and stand on the streets and do.

THE COURT: I somewhat question that a police car has a right to stand outside, for instance, your house.

MR. GLAVIN: He wasn't outside the door, he was on the corner—if it was a police car; I don't know whether it was or not.

MR. FRAZER: We will take this up by another witness, Mr. Macri, when he is sufficiently recovered from his injuries.

MR. GLAVIN: You can check it up if you like, but I submit to the Court if it was a police car it had a perfect right to be there and this testimony should be stricken from the record.

THE COURT: I will deal with the issue when we find if it was a police car or not.

MR. GLAVIN: It is an attempt to create a presumption or something.

MR. FRAZER: Do you wish to cross-examine Mr. Cometa?

MR. GLAVIN: Yes. I might say that the police action in stopping Mr. Cometa, whatever his name is,

car and examining the car, searching the car and questioning the occupants is the custom of the Jersey City police with all out-of-town cars where they think that the passengers are suspicious looking characters.

MR. FRAZER: May I ask counsel whether they are also accustomed to taking the private property of the occupants?

MR. GLAVIN: You may ask what you like but I am not on the witness stand.

MR. FRAZER: No, you just made an admission. I was wondering whether you would be willing to extend it.

MR. GLAVIN: I won't admit anything, so don't bother asking me.

CROSS-EXAMINATION.

By MR. GLAVIN:

Q. What did you say your position was?

A. I am a field representative.

Q. Of what?

A. CIO.

Q. When did you come to Jersey City?

A. Last May 15, 1937.

Q. Where were you located before that?

A. I worked before that among the automobile workers in the Detroit area.

Q. Oh, you were out there during the slaughter in Detroit?

MR. FRAZER: I object.

Q. The sit-down strike?

A. I don't know anything about slaughter.

Q. Well, were you engaged in the sit-down strike out there?

A. No, sir.

Q. You had nothing to do with it?

A. No, sir.

Q. You knew about it, I suppose?
A. Surely, I read in the paper about it.
Q. But you weren't in it?

THE COURT: Is it your view——

A. If you wanted to know my activities I will give it to you, I will tell you exactly the area I worked from and what I done, because I am not ashamed and I am not afraid of.

THE COURT: I would like to ask right now, Mr. Glavin, is it your view that it can be the province of this Court to try one or another labor policy, whatever it may be, or however one might feel about it privately?

MR. GLAVIN: No, but I think I have a right to find out this man or any other witness' background in connection with labor activities that he may have conducted at other places, and I think it is a well known fact that the automobile industry in Detroit had a lovely time during a certain period with the CIO, and he just testified that he was engaged in CIO activities among automobile workers in Detroit before he came to Jersey City.

MR. FRAZER: He has a right to give the background, you know.

THE COURT: Is it going to be a defense that the plaintiffs indulged in labor activities which you think are obnoxious?

MR. GLAVIN: We are——

THE COURT: Is it going to be a defense in this case?

MR. GLAVIN: Well, I am not offering it as a defense; this is cross-examination.

THE COURT: Cross-examination, of course, I need hardly tell you, Mr. Glavin, is limited to the issues. I mean I am not passing on the issues. I would be just glad to have you state them.

MR. GLAVIN: I think that it is important to find out what the background of these witnesses are that came into Jersey City so suddenly.

THE COURT: You have made several references now, Mr. Glavin, to sit-down strikes. It would not be, I think, exaggerating to say that one would gather from your tone that you disapproved of them.

MR. GLAVIN: I most surely do disapprove of them.

THE COURT: It wouldn't be becoming, of course, for the Judge presiding to express either approval or disapproval. I am only asking you is that going to be one of the defenses? If it is, I would like to know it.

MR. GLAVIN: If it develops in the course of the proof by the plaintiffs that that will be a defense, it will be. I cannot tell at this time just what defense testimony will be put in. I don't think that we should sit by and permit any witness to come on the stand and testify to what he presumed to be the activities of certain people in Jersey City without the right to cross-examine him and find out where he came from, why he came to Jersey City and what he was doing in Jersey City.

THE COURT: He told you that he came from Detroit. As a matter of fact, this witness told you that he had nothing to do, as I understand it, with sit-down strikes; is that not correct?

THE WITNESS: That's right. Detroit isn't my home, your Honor; I was assigned there temporarily.

Q. Why did you come to Jersey City?

A. Because I was assigned. I have had more than one assignment.

Q. Who gave you the assignment?

A. John L. Lewis, chairman for the CIO.

Q. Directly?

A. Right.

Q. To come to Jersey City?

A. Right. The fact is that I made the request, not to come to Jersey City or New Jersey, but because my home is northeast Pennsylvania and if they want my activities as an organizer I wanted to get an appointment close to my home.

Q. You just said your home was in Detroit, didn't you?

A. No, I didn't, I said my home was 15 Searl Street, Pittston, Pa.

Q. All right. What instructions did you get when you were sent to New Jersey.

MR. FRAZER: I object to that.

THE COURT: I will allow him to answer.

A. I will answer that. We were told——

Q. Not "we," what were your instructions?

A. Well, of course, I wasn't there alone. You want to know what took place down there, don't you?

Q. Yes.

A. Well, naturally I was one of thirty-two organizers who were assigned.

Q. What were your instructions?

A. To come over here in the State of New Jersey and try to organize the unorganized in this area because this is a great industrial area and there are so many thousands and thousands of workers unorganized.

Q. Was there anything said about Jersey City?

A. No, sir.

Q. And you came and reported to Mr. Carney, is that true?

A. I came here before Mr. Carney came.

Q. Before Mr. Carney came?

A. Yes, two or three days before.

Q. So that your testimony summed up consists of this, that on a certain day——

MR. FRAZER: I hardly think that that is proper.

MR. GLAVIN: Is there an objection?

MR. FRAZER: Oh, decidedly an objection to any such question as that, summation by counsel.

MR. GLAVIN: Well, I was just following your example. You have been doing it all day. All right, I won't use the words "summed up."

Q. So that you came to Jersey City and after you were here some time in October, 1937, in an automobile bearing Pennsylvania license plates, you drove from Academy Street down to Bay Street and on your way an automobile pulled up alongside of you with a sergeant of police in uniform and two men in civilian clothes and ordered the driver to pull to the curb?

A. Right.

Q. And when he pulled to the curb the sergeant got out, opened the door and asked you where you were from?

A. Right.

Q. And what you were doing in Jersey City?

A. That's right.

Q. And after examining or searching the car you were permitted to go on about your business?

A. That's right.

Q. Unmolested?

A. With the parting warning—pardon me.

Q. Now, just a minute.

MR. FRAZER: He has a right to limit——

MR. GLAVIN: He has a right to answer my questions without your telling him——

MR. FRAZER: I object, if he says this was a statement he has a right to qualify it if it was qualified.

Q. You were permitted to go on your way unmolested?

A. With the parting warning——

MR. GLAVIN: Just a minute, I ask the Court to direct this witness to answer the question yes or no.

THE COURT: I will adjourn until two o'clock.

(Recess.)

AFTERNOON SESSION.

THOMAS COMETA, resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. GLAVIN:

THE COURT: All right, Mr. Glavin, any further questions?

MR. GLAVIN: Yes. Will you read the last question, please?

THE REPORTER: There was an objection in the middle of the question.

"Q. You were permitted to go on your way unmolested?

"A. With the parting warning——

"MR. GLAVIN: I ask the Court to direct this witness to answer the question yes or no.

"Q. You were permitted to go on your way unmolested?"

THE COURT: I think he so testified, Mr. Glavin. That is my recollection.

MR. GLAVIN: Well, he may have testified to that, but I think that question is proper cross-examination.

THE COURT: Well, go ahead and answer it again the same way.

MR. FRAZER: He stated, as your Honor remembers, on direct examination——

THE COURT: He went up to this Standard—what is the name of it—Standard Cap and Seal.

MR. FRAZER: Yes. As he left he was threatened by the police officer if he did anything to look out, and so on, and it was that qualification I think the witness

had a desire to put in when Mr. Glavin interrupted him.

MR. GLAVIN: You mean you interrupted Mr. Glavin.

THE COURT: Well, it doesn't matter who interrupted who.

MR. GLAVIN: I think that is a proper question.

THE COURT: Go ahead. Answer the question.

MR. GLAVIN: And calls for a yes or no answer.

THE COURT: All right, all right.

A. With the parting warning from the sergeant——

MR. GLAVIN: Well, now, I move that that be stricken out and the question answered.

THE COURT: I don't think there is much use in yes or no answers, Mr. Glavin.

MR. GLAVIN: Well, it is the persistence of this witness to get one certain fact into the record, because of his counsel's insistence that it go in the record.

THE COURT: He says it is the truth. Now I don't pass on whether it is or not.

MR. GLAVIN: Well, I think I am entitled to have the question answered yes or no. It is a direct question.

Q. You were permitted to proceed on your way unmolested, is that right?

A. With the parting warning from the sergeant that if we were caught soliciting only God help you.

MR. GLAVIN: I ask the Court if you will direct this witness to answer that question without inserting what he thinks ought to be in here.

THE COURT: Of course, the trouble with that is what does the word "molest" mean, physically molest?

MR. GLAVIN: Physically molest.

A. We wasn't physically molested, no, sir.

Q. And you were permitted to go on your way?

A. We were permitted to go.

Q. And the only other occasion that you had to come in contact with the authorities of Jersey City was when you opened your headquarters on Academy Street you noticed an automobile parked at the corner of Academy Street and Summit Avenue, which you claimed was there consistently for a number of days; is that right?

A. Yes, sir.

Q. And that car contained two men in civilian clothes?

A. Sometime one.

Q. What's that?

A. Sometime one.

Q. Sometimes one. Did either of these men ever approach you?

A. Not, me, no, sir.

Q. That is all.

MR. FRAZER: That's all, Mr. Cometa. Thank you. Now, the name of the manager of the Peoples Center was asked for and I promised to get it if I could. It is Michael Zlepko. I am going to ask Mr. Morris Ernst to examine the next witness.

MR. ERNST: I would like Mr. Glavin to take the stand.

JOSEPH C. GLAVIN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Will you state your name and address, Mr. Glavin.

A. Joseph C. Glavin, 39 Bentley Avenue, Jersey City.

Q. And your present position?

A. Judge of the First Criminal Court of Jersey City.

Q. And of counsel in this present proceeding?

A. Yes, sir.

Q. You were an assistant corporation counsel, were you, for a time?

A. I was.

Q. For how many years?

A. I was connected with the corporation counsel's office for a period of seven years; I was assistant corporation counsel for a period of about three years.

Q. Were you an assistant corporation counsel at the time of your resignation to become a judge?

A. I was.

Q. And at what date was that?

A. Approximately February first. I don't recall exactly.

Q. Some time during this current calendar year?

A. That is right.

Q. It was certainly after November 30, 1937?

A. Yes.

MR. HAMILL: After November 30th, did you say?

MR. ERNST: November 30, 1937.

Q. Do you recall that you were a witness in a proceeding in the Federal Court in March 1937, a proceeding entitled American Civil Liberties Union, et al. v. Daniel Casey and Harry Walsh?

A. I don't recall the date, but I was called by Arthur Garfield Hays in that case as a witness, yes.

Q. Do you recall having testified in that case that you had advised the police department or the Commissioner of Public Safety of Jersey City in connection with strikes?

THE COURT: Would you like to see your testimony, Judge Glavin? I have it right here.

THE WITNESS: I don't care to see it, if your Honor please.

A. I don't recall exactly what I testified to. I answered the questions that were asked of me.

Q. I ask you, do you now recall whether, while you were an assistant corporation counsel, you advised the Commissioner of Public Safety of Jersey City or the police department in connection with strikes?

A. Was I asked that question?

Q. No, I am now asking you whether you now recall whether, when you were assistant corporation counsel, you did advise in regard to strikes?

A. I did at times, yes.

Q. You did at times. Do you recall what your position was in that capacity in respect to the rights of deportation and eviction?

A. I had no position officially. I was advising as a member of the bar of this state, and as assistant corporation counsel of Jersey City. What my position was had nothing to do with the situation.

Q. What was the advice——

MR. HAMILL: Now—after you complete your question, I want to make an objection.

MR. ERNST: To the question I am going to give?

MR. HAMILL: After you ask the question.

MR. ERNST: To this question?

MR. HAMILL: Yes, yes.

MR. ERNST: I might change my question.

MR. HAMILL: Oh, all right, if you do that, I want to hear that.

Right here I may just as well object on what you have given, because it will be of the same general tenor and effect.

He is asking this man to divulge confidential communications between an attorney and client, and he cannot do that without the consent of the client.

A. I have no intention to, Mr. Hamill.

MR. HAMILL: He is asking him, what advice did you give your client. That is a confidential communi-

cation between attorney and client. I wouldn't answer it.

Q. Mr. Glavin, have you previously testified in a court proceeding as to whether or not the police in Jersey City had the right to deport people—not the advice, but have you testified on that subject?

A. I don't recall that that question was ever asked of me.

Q. Mr. Glavin, I want to show you a transcript of the printed record in the United States Circuit Court of Appeals, October Term, 1937, case 6401, with particular reference to testimony stated to be that of one Joseph Glavin, commencing on page 428, and I ask you to look at that testimony to refresh your recollection, whether you are not the Joseph Glavin who so testified in that case?

A. I am the Joseph Glavin that so testified in that case.

Q. Now, will you kindly look over that testimony to refresh your recollection in regard to whether or not you gave advice in regard to deportation and eviction, just look over whether you did.

A. Well, now, just a minute. I will look it over when I get ready, or if I have an objection, being counsel in this case, I have a right to make it whether I am on the witness stand or not.

MR. ERNST: No question about it.

THE WITNESS: And I don't intend to have you tell me what I am going to do.

MR. GLAVIN: What is the purpose of this testimony or these questions?

MR. ERNST: Your Honor please, I am not called upon at the moment to state the purpose of the testimony.

MR. HAMILL: Well, we will object on the ground it is irrelevant.

MR. ERNST: If you will not interrupt me I will be happy to state it. The situation at the moment is that this trial opened up with a statement by the counsel for Jersey City, read into the record stating: "We have not interfered and will not interfere with the free access by the plaintiffs or by any persons acting in sympathy or in concert with them, to or upon and through the public streets, highways and thoroughfares of Jersey City." I now wish to interrogate this witness, who is a law officer of this community, along the following lines, and I don't want to be accused of testifying for him but you have asked me the purpose.

As I read his testimony, he made it clear that the city claimed, through its law officers, in March, 1937, to have the right to deport citizens.

THE WITNESS: I never made any such statement.

MR. ERNST: I am telling you my purpose. We will quote your testimony one way or the other. Now, I want to know whether that position, as I read it in the prior case, was reversed by Mr. Glavin or reversed by his successors. If not reversed, why didn't they stop the deportations? I want to prove that they had knowledge of alleged deportations and I want to know now what the position of Jersey City is in regard to evicting people and I will tell you my purpose in asking it. The purpose is perfectly simple. If the State of New York should adopt a similar thesis of law on the right to evict you would have a mass of our population living without a city and traveling on ferry boats back and forth and I want to reduce the proposition of a city's right to eviction and deportation, whether the evidence to date is sufficient in the Judge's mind is unimportant,—we have more of it,—I want to reduce it to an absurdity, in what you might call a nation instead of a city.

MR. HAMILL: May I state something there? In other words, he is calling this witness to act as his ex-

pert witness to determine and de-limit the right of a city to exercise what he calls the power of deportation. This man is called as a legal expert; he is not called as a fact witness but as a legal expert to give his opinion. Called in that capacity, he does not have to testify unless he wants to. He is not obliged to give his opinion. Have I made my point clear?

MR. ERNST: Yes, very clear, Mr. Hamill. If Mr. Hamill's facts were correct his conclusion would be entirely correct. I didn't pick Mr. Glavin as an expert on the law of deportation, although I might very well have done so. I picked him because he was a law officer of this city, is counsel in this proceeding. One of the reliefs asked in the bill is that this community of Jersey City stop deporting human beings resident in America. Now, I didn't pick him as a member of the bar, as an expert on the theory of law, nor will I ask him any detailed questions as to what cases he relies on. I will only ask him as an expert, if you wish it, one question.

In the previous trial he was asked had he ever found any cases to justify the theory of eviction. He said no, and I want to find out whether since last March, 1937, he has looked up the law and ever found such a case.

THE WITNESS: Just a minute, let me make a statement, Mr. Hamill. I want to make a statement in answer to your previous statement. My testimony, together with the testimony of a great many other witnesses produced on behalf of the defendants in this case, American Civil Liberties Union, a corporation, &c., v. Daniel Casey, apparently was believed by the Circuit Court of Appeals in Philadelphia because they granted a supersedeas, which is still in effect, staying the injunction of this court in that case.

THE COURT: Did they ever decide the case, Mr. Glavin?

MR. GLAVIN: The case should be decided shortly. I argued it about a month or six weeks ago at Philadelphia.

THE COURT: A year after the stay, as I remember it.

MR. ERNST: Your Honor please, it seems to me entirely unimportant whether the final judgment of the Court in that case is to be reversed, I am not at all concerned with it at this time. I am merely concerned with a law officer of this community having testified, as I read that record, that the community had the right to deport, that a cop could decide who should be deported. Now, then, I want to know whether he so said in March, 1937, and whether he changed his position while a law officer of this community.

MR. HAMILL: Since he is not a defendant what difference does it make?

THE WITNESS: If you will read the testimony, Mr. Ernst, you will find I did not testify to any such thing.

MR. ERNST: Your Honor please, I want to read the testimony. I accept the suggestion of reading it.

MR. HAMILL: Your Honor please, now before——

MR. ERNST: It is the suggestion of the witness that I read it.

THE WITNESS: Read it to yourself.

MR. HAMILL: I want to address a——

THE WITNESS: Don't make a speech about it.

MR. HAMILL: I want to address a motion to the Court. As assistant corporation counsel or as corporation counsel, we have advisory powers. Now, it is not anything to Mr. Ernst,—it is nothing to Mr. Ernst or to anybody else what advice we give to the officers of the government.

The officers of the government are responsible for their acts, and if our advice is right, then their action is right. If our advice is wrong, their action is wrong. But they could not justify themselves by saying, "We did it under the advice of counsel." They might excuse themselves, but they could not legally justify themselves. So what purpose has this testimony to find out, "did you hold one opinion at one time and now have you changed your opinion?"

MR. ERNST: I want to find out, if your Honor please, the position of the legal advisers of the City of Jersey City to the police.

THE COURT: At present, you mean?

MR. ERNST: And then I want to proceed to find out through the mouths of the police, and mind you, these are not the most friendly witnesses, but I am trusting that they will bring out our case, I want to find out whether the police followed the advice. For example, let us assume that Mr. Glavin now testifies that after March he changed his opinion and instructed the police that there shall be no more deportations.

THE WITNESS: Which I didn't do.

MR. ERNST: If in our—what was that?

THE WITNESS: Which I did not do.

MR. ERNST: Now, let us assume, however, that his successor had modified the opinion and had revoked the position that deportations are lawful. Then I would like to prove, and I will prove that the police, despite the position of the counsel to the police, continued deportations.

That is clearly within the proof permitted under our bill.

MR. HAMILL: The bill——

THE COURT: I think you should——

MR. HAMILL: Have you finished?"

THE COURT: Mr. Ernst, I think you should ask Mr. Hamill as the head of the office.

MR. HAMILL: Yes, ask me.

THE COURT: What is the present position of the city government of Jersey City with respect to what have been called deportations.

MR. HAMILL: And we object on the ground that that is absolutely irrelevant because, if your Honor will write me or Mr. Ernst a letter such as we get from the different departments, write me a letter, as your Honor knows, setting forth the facts, then I will be able to give an opinion.

THE COURT: Well, you are charged in the bill with——

MR. HAMILL: And those are our duties.

THE COURT: —forcibly removing people from the city limits. Do you justify that removal or not?

MR. HAMILL: You can forcibly remove anybody, depending upon the circumstances. Suppose somebody is going to kill him? Wouldn't it be an act of mercy toward him to take him away, out of the zone of danger?

MR. ERNST: If your Honor please, it seems that Mr. Hamill has opened the door to a discussion of the theories under which they justify deportation. I insist that I have a right to get from Mr. Glavin, because of the first question I asked him, "Have you"——

MR. HAMILL: We object. I merely want to say this, if you don't mind.

MR. ERNST: I would rather not have you interrupt me, Congressman.

MR. HAMILL: All right.

MR. ERNST: I have the right to proceed with Mr. Glavin and then pick up Mr. Hamill as a witness later, for this reason: that in the previous cases Mr. Glavin testified, and Mr. Casey so confirmed, that Mr. Glavin advised the police officials, and I want to get a continuous stream of advice for the past year, without a hiatus. Mr. Glavin was assistant corporation counsel during the November, December and January periods. I want to examine him in regard to the advice which he said in his previous case he gave in regard to picketing, the right to interrupt, as we view it, organizational activities, and then I want to see whether he changed his position after March, and I want to see if it is a sustained plan of the enforcement officials of the community to interrupt picketing, to stop circulars, to deport people, to continue searches and seizures, and on all these points Mr. Glavin and Mr. Casey have previously testified, and I am shocked at a public official relying on a question of privilege before his client even claims the privilege.

THE WITNESS: That's——

MR. ERNST: And I now ask, does the client claim this privilege?

MR. HAMILL: I wish to speak before the client. Of course, I would not for the world stop Mr. Ernst. I know how keenly sensitive he is and how delicate he is, and I know he must feel prostrated over the fact, but in spite of the ailment my objection produces on him, physically and mentally, I must present it.

The bill charges that certain acts were done by the police. It isn't any concern of anybody by whose advice. What this court is determining is, is the act of itself a lawful act. That can only depend according to the circumstances. After we get the circumstances out,

then if counsel thinks it needs some correct advice on the law, why we will be glad to give it.

THE COURT: I suppose that it would be relevant, Mr.——

MR. HAMILL: But they are calling us to know, "Did you advise them to do this?"

My answer is, "It is none of your business what we advised."

THE COURT: I suppose it would be relevant on the issue——

MR. HAMILL: And it is irrelevant.

THE COURT: Wait a minute, Mr. Hamill. If you will sort of face me——

MR. HAMILL: Remember, I haven't the slightest objection, neither has Mr. Glavin, to going on the stand and answering everything. If he wants to carry this thing far afield, we will carry this thing all over the lots, record or no record. I am attempting to try this case in a legal and orderly manner, but if the gentleman wants what his friend calls a picture or a scene, or a ballyhoo, he will get it, in over-abundant measure; and in order to tie up that statement, that is what his question reveals.

THE COURT: I suppose whether the policy of Jersey City's legal department is to advise the continuance of the acts complained of——

MR. HAMILL: And suppose it did?

THE COURT: —that would be relevant——

MR. HAMILL: I say it would not be relevant because if it were wrong, it would not justify an official. It might excuse him. It would not justify an official. And if it were right, it would add nothing to his credit.

THE COURT: It would certainly have some bearing on the possibility of his continuing the acts.

MR. ERNST: If your Honor please, I think we can rest also on another legal foundation. The injunctive prayer for relief endeavors to restrain all of the agents and servants acting in connecting with the plan, and my first question therefore to this witness was in relation to his official capacity that I may call a servant of the people of Jersey City, and I think we are clearly within the evidence there.

THE COURT: I think the examination of the legal department ought to be at the end, though, Mr. Ernst.

MR. HAMILL: Let us know what it is. When we answer a question, we answer it on a state of facts, and if Mr. Ernst will tell us the state of facts, which we have forgotten, on which we gave that opinion, why then we will be able to give you an opinion and tell you why we did it.

THE COURT: I think we are wasting time——

MR. HAMILL: For instance, there isn't anything unreasonable in that, for instance, a public officer might come to me and ask my opinion on a state of facts—say a month ago—and someone present another state of facts and say, "Now, you gave him that opinion," and I would say, "Well, now, wait a minute. Let us see if there is any letter or something; call the public officer and see what were the facts on which I rendered that."

THE COURT: If, Mr. Hamill, the evidence showed a series of purported deportations, as they have been described, and then the legal department in Jersey City were to testify that, "We are going to advise their continuance," that certainly would be some evidence on which a Court must consider an injunction.

MR. HAMILL: If the Court, for instance, were to issue a decree; but until the Court issues a decree, un-

fortunately we haven't the guidance, I say it with great respect, as you know, we haven't the guidance of any court; we haven't the guidance of any court. When a decision is laid down, we advise following it. Take, for instance, the ordinance declared unconstitutional in the Griffin case. Up to that point we said, "Stand by our own ordinance." When the Supreme Court spoke we said, "No, our ordinance to that extent has been ruled out. Follow the law."

Now, if your Honor, for instance, were to render us a decision, why, of course, we would say the United States court has spoken, we must follow that decision.

THE COURT: I think we will postpone examination of the legal department until after the fact witnesses, Mr. Ernst.

MR. ERNST: Your Honor please, the advantage of doing it this way is that the examination of this witness and Mr. Hamill must have no relation to any particular state of facts. It seemed to me much more orderly to get this on the record.

As I understand the city's position in March, 1937, they said—and on this I would like to examine the witness—that they had a right to deport, and I want to know whether they say they have a right to deport, even if no unlawful acts have been committed.

MR. HAMILL: Well, we will answer that by saying that you cannot deport if no unlawful acts are committed. That's the easiest thing on earth to answer. I will let you answer it for us.

MR. ERNST: Now, I want that answer in the form of testimony from Mr. Glavin. Will you let him answer that?

MR. HAMILL: No, I won't. It isn't proper for you to ask that question, but if you are seeking advice I am

in a very gracious and munificent mood today and I will be glad to give it to you.

MR. ERNST: I didn't ask your advice; I want to know whether a Judge of this district, a member of the bar, a former corporation counsel, is ready to look over some testimony that he gave a year ago to refresh his recollection so that I can ask him what he said then.

MR. HAMILL: Not until we know whether this is a situation similar to that to which that advice would apply, and that can only be known after we get the testimony in.

MR. ERNST: After he has looked it over, I will ask him the question as to whether it is similar or not.

MR. HAMILL: Well, we don't know and neither do you.

MR. ERNST: I want him to look it over.

MR. HAMILL: Know whether the situation in this case is the same as that? You have the benefit of that record. Neither you nor I know what this case is going to be, at least we don't. We haven't prepared our witnesses, I don't know whether you did or not, and we don't know the case until it goes in.

MR. ERNST: Mr. Hamill, may I just clarify it, and I think you will agree with me—follow me a moment. The testimony of Mr. Glavin to which I make reference in no way relates to any state of facts particularly; it does not relate to that particular case that was in court. They were general questions on the policy of the law authorities of the community on instructions to the police on the right of deportation, picketing and other matters in issue in general terms here, so how could we be aided by specific facts at all?

MR. HAMILL: Then he has no right to inquire what takes place between the law department and public offi-

cials. There is no power on the part of anyone to find out what a law department as a general rule, without reference to this case, does. What advice do we give to public officials? You might as well ask a lawyer "What advice do you give to our client?" And he says, "You must excuse me, that is my own affair and the affair of my client."

THE COURT: I think you can plead privilege if you want to.

MR. ERNST: If your Honor please, will privilege lie, assuming that Mayor Hague and the city officials wish to plead privilege?

THE COURT: I haven't been able to make out whether it does or not.

MR. HAMILL: I don't know. This is the first time—Mr. Ernst, I am conducting this case in a perfectly legal manner, and I am suggesting these questions of law. If Mayor Hague and I understand you have called him as a witness, and when you get him on the stand I will assure you he will neither be dumb nor tongue-tied, so that you can get lots out of him after you get him on the stand——

THE COURT: We are not talking about that at this moment. We are talking about whether you want to plead privilege between you and your client.

MR. HAMILL: I don't know, but I would do what your Honor would do as a lawyer, if someone called you to the stand in the absence of your clients, you would say, "I will first ask my client."

MR. ERNST: Your Honor please, there is one of the clients parties defendant in the court and I suggest that we take a five-minute adjournment if necessary and have Mr. Hamill consult Mr. Casey and see if Mr. Casey wishes to plead privilege.

MR. HAMILL: Well, we don't have to take any adjournment because Mr. Casey, by my suggestion now, will plead privilege if he follows my suggestion.

MR. ERNST: I take it that the client pleads privilege.

MR. HAMILL: The client pleads privilege and the lawyer makes a motion for it to be stricken out on the ground of irrelevancy, incompetency and impertinence.

THE COURT: You had better add "scandalous."

MR. HAMILL: The last is the best ground.

MR. ERNST: Have you ruled on whether the plea of privilege can stand?

THE COURT: I would have to look that up. I don't know how far it goes, I never have known.

MR. ERNST: May I then suggest that I withdraw this witness and I will call Mr. Casey. It is understood I may recall Mr. Glavin?

THE WITNESS: Oh, I am deeply honored by it, Mr. Ernst.

MR. HAMILL: And call me, it will be a pleasure, Mr. Ernst, to have a colloquy with you.

(Witness withdrawn.)

DANIEL CASEY, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. What is your address?

A. 179 Fairview Avenue.

Q. What position do you hold?

A. Director of Public Safety of Jersey City.

Q. How long have you held that position?

A. Since May 5, 1937.

Q. And by whom are you appointed to that position?

A. I was appointed on May the 4th, sworn in on May the 5th, by the City Commission, at the death of Director Wolff. On May the 10th I was elected to the City Commission and I was sworn in to the office of Director of Public Safety, I think it was May the 18th, 17th or 18th, I am not certain, 1937.

Q. Before you held that position what position did you hold?

A. I was Chief of Police.

Q. And for how long?

A. About two years—well, no, for about a year, not quite a year. While Director Wolff was sick I was Acting Director for about a year.

Q. You were served with a subpœna ordering you to bring some records into court today?

A. Yes, sir.

Q. Have you the records with you?

A. I have not in here; they are out in the hall with my chauffeur.

Q. Will you kindly have them brought in, please?

(Documents produced.)

Q. Do these documents, Mr. Casey, include all of the items called for in the subpœna, to wit, all records concerning outdoor meeting applications made to the Director of Public Safety of Jersey City during the past three years?

A. Well, I would have to bring the memorandum books from headquarters. If you want that I can do it.

Q. We certainly want them. Does it include the original applications for such meetings?

A. Yes. I think what it calls for in that order I brought.

Q. No, I want you to look through what you brought and tell me whether you have brought what the order of the Court calls for, the original applications for such meetings.

A. I think it calls for two applications of Mr. Rothbard and applications by Spaulding Frazer.

Q. All right. Now, let's cover those. First I just want to make sure we have everything. I take it that these documents here are the ones called for in the subpœna, reading "Original letters addressed to you from Samuel L. Rothbard dated December 17, 1937, December 20, 1937 and December 28, 1937, and the originals of letters from Spaulding Frazer dated December 23, 1937 and January 23, 1938."

MR. HERSHENSTEIN: January 3d.

MR. ERNST: January 23d.

THE WITNESS: That is January 3d. I didn't get any on the 23d.

Q. Third, I am probably in error.

MR. HERSHENSTEIN: Those are here.

Q. So much we have. Now, will you look through the balance and let me know whether you have all the records concerning outdoor meeting applications made during the last three years aside from the items you said are not there which you described, I think, as a memorandum book of some kind.

A. Yes. That is '35, '36 and '37, is that right?

Q. Those are all the records outside of the memorandum book?

A. Outside of the memorandum book, the applications.

Q. We might save some time if you would care to tell me what its contained in the memorandum book.

A. Where the meeting is going to be held and who the permit was issued to.

Q. But aside from that information everything that is in your files in relation to applications for meetings is right there, every document?

A. So far as I know. What I did do I checked back for twenty-five years on applications that were issued. I have a record of every application that we have that was issued

for twenty-five years from the time that Mayor Hague was elected to the City Commission and became Director of Public Safety.

Q. And the original applications for every meeting?

A. Not the original applications.

Q. Let me make it clear so that you and I don't misunderstand each other. The subpœna of the Court asks for the original applications for such meetings for three years.

A. I didn't have them; I got a list of the permits that were granted.

THE COURT: Did you have the refusals, too, Commissioner?

THE WITNESS: Well, we never had any trouble, your Honor, till last December. We never stopped anybody from holding meetings, always issued permits.

THE COURT: You mean they all were granted?

THE WITNESS: Yes, till I think it was December, 1936. I will explain that to the Court later if you want me to and why we stopped.

THE COURT: I imagine we will get to that.

THE WITNESS: No doubt about it.

THE COURT: Well, why can't your secretary furnish counsel with a list—will this be satisfactory—of the applicants and the date that they were permitted to speak?

THE WITNESS: I have got it right here, your Honor.

MR. ERNST: No, your Honor.

MR. HERSHENSTEIN: We have a complete list here.

MR. ERNST: The Judge asked me a question. I say frankly—and I don't want to divulge the reason at the moment——

THE COURT: No, I didn't ask it.

MR. ERNST: It will not be at all satisfactory.

THE COURT: There is a list. This is the list of three years, is it, counsel?

THE WITNESS: No, I think that goes all the way back, your Honor; if it doesn't, I have the list here. I am wrong, your Honor.

THE COURT: '32.

THE WITNESS: Here it is right here. Excuse me.

THE COURT: Yes. For instance, here it goes back as far as—well, the first is 1913. I guess that's a mistake.

THE WITNESS: 1913 is right, your Honor.

THE COURT: The first is the Democratic Party, permission to hold street meetings; second one, Socialist Party, permission to hold street meetings; third, the Fielder Democrats, &c., the Wittpenn League—would a perusal of that——

MR. HERSHENSTEIN: Will you refer to the documents the Court just looked at as a list of items, permission to hold street meetings?

THE COURT: This is a supplemental one, Commissioner?

THE WITNESS: Yes, sir; I had that for three years.

MR. ERNST: Your Honor please, these lists merely indicate action taken.

THE COURT: What is desired in addition to that?

MR. ERNST: What is desired in addition to that is this: here is an ordinance, whether constitutional or not, under which this official presumes to act, and we must proceed to examine him in respect to the use or abuse of his discretion, the basis of the standards that

he created, the question of discrimination as between parties, the kinds of investigations he made and another wide field of inquiry, which I do not care to divulge at the moment, but which is pertinent to this situation.

THE COURT: What other document would be necessary for that purpose?

MR. ERNST: I would like to see the original applications, I would like to know whether they were in writing; I would like to know whether they call for information which he has asked in certain respects in cases of certain applications, he asks for the subject matter, in others the speakers; in others he says, "I don't like the subject matter, I disagree with it. You are wrong on the subject matter." We are going to prove his complete discrimination in certain instances and we are relying on the truthfulness of this witness to the extent that if he brings us a full file we will find that he has never, never conducted an inquiry in the direction or in the mood in certain cases as he has in others and his right to ask certain questions we intend to explore. We can only do that by comparison of the applications.

MR. HAMILL: Has counsel the right to search the operations of a man's mind to know why he came to a conclusion?

THE COURT: Commissioner—will you listen to these questions, Mr. Ernst, if you would—in those applications, the list of which you have given, beginning in 1913, do you know whether there are any other documents accompanying them?

THE WITNESS: There is nothing there only the record in the memorandum book.

THE COURT: What is that, is that any different from the list?

THE WITNESS: Yes, because the memorandum book, when the order was issued from the chief of police office to the different precincts where the meetings were to be held, there was a memorandum made to notify the man on post that there was a meeting on that corner or wherever it was on that evening.

THE COURT: Well, was there any other document in your file?

THE WITNESS: Well, that I couldn't tell you about, your Honor. I wasn't chief of police at that time.

THE COURT: Is there since you became chief?

THE WITNESS: There have been letters in there, and there have been——

MR. ERNST: If your Honor please——

THE COURT: We are only dealing with the subpœna duces tecum now.

MR. ERNST: Yes.

THE COURT: I am trying to find out if he has any other document.

THE WITNESS: No, I brought everything practically that I have, your Honor.

MR. ERNST: Now, if your Honor please, the records before us do not even show the instances of renewal of permits.

THE COURT: I thought he said there were none.

MR. ERNST: Oh, no. Mr. Casey said there weren't up to maybe a year or two ago.

THE COURT: Oh, yes.

MR. ERNST: But recent refusals are not even shown in these documents.

THE COURT: Aren't they, Commissioner?

THE WITNESS: They weren't asked for. I brought —to the best of my recollection I brought what I was asked for.

MR. ERNST: "All records concerning outdoor meeting applications made to the Director of Public Safety of Jersey City during the past three years."

We couldn't have said it clearer.

That is in regard to applications.

THE COURT: Where is that three-year list?

MR. HERSHENSTEIN: Mr. Frazer has it.

MR. ERNST: Have you got the three-year list?

MR. FRAZER: The three-year list is right here.

MR. ERNST: What is this (indicating)?

MR. FRAZER: This is prior; prior.

THE COURT: Does this show the refusals, Commissioner, this three-year list?

MR. HESHENSTEIN: Speak up.

THE WITNESS: Your Honor, we weren't refusing any body. We were having no trouble. Everybody was allowed to talk.

THE COURT: Well, the last date here seems to be the thirteenth, of the fifth month; the thirteenth of what is that? April, isn't it? Fifth month—no, May; the thirteenth of the fifth month, 1938. That is the fifth of this last month?

THE WITNESS: Some religious organization, if I remember rightly, your Honor——

THE COURT: Yes; Reverend C. E. Kirkwood. Are there any refusals there?

THE WITNESS: No refusals there. We haven't put any refusals on there, your Honor.

THE COURT: Oh.

THE WITNESS: Because the refusals are right in my office.

THE COURT: The refusals are not in this file then?

THE WITNESS: They are all the ones that I understood he wanted and I——

MR. ERNST: Specifically we asked for the originals of the correspondence.

THE COURT: And the refusals?

MR. ERNST: And the refusals; except in one case, where there was never a refusal.

THE WITNESS: I don't know about——

MR. ERNST: And one of the applications has been held; we have never been advised whether the application was granted or not.

MR. HAMILL: He said, Mr. Ernst, if it is in any way helpful, that up to December, 1937——

THE WITNESS: Anything that I can help out on I will be glad to do so.

THE COURT: I think if you will tell him what you want he will get it for you.

THE WITNESS: If you will let me know just what the application is you want, and if it is there, I will send right for it.

MR. ERNST: No, no; I want from you, and I think we have a clear right to it, I want from you all records concerning outdoor meeting applications. I take it that these are all the records you have, where you have granted permits. Now I want in addition all records

for all applications where you have either denied permits or are still holding them up undecided.

MR. HAMILL: Now, may I get that——

MR. HERSHENSTEIN: I think we can do that.

MR. HAMILL: You don't want all of the records. You want all of the records of cases where there were denials.

MR. ERNST: I am coming to the balance later. I certainly want all of the records of denials.

MR. HAMILL: All right.

MR. ERNST: And pending applications.

MR. HERSHENSTEIN: We can get those.

MR. HAMILL: We can get those. Pending applications?

MR. ERNST: Yes, because some of them you never deny and they just go dead on you. I have got one here which I can show you.

MR. HERSHENSTEIN: We can produce those.

THE COURT: Mark those in evidence that you have got here, Mr. Ernst. I think it would be better if you marked them.

MR. ERNST: If your Honor please, I would like to have these marked for identification.

THE COURT: All right. Mark them some way so they are on our records.

MR. ERNST: Yes.

I would like to have them marked for identification.

MR. HERSHENSTEIN: Do you want to mark them in one batch or separately?

MR. ERNST: No, separately. Certain documents produced by the witness pursuant to subpœna duces tecum, the documents being identified as follows:

Jersey City Police Department, itemized list of permits issued to hold street meetings, et cetera, to political parties, 1913 to 1938.

MR. HAMILL: Now, I don't understand that——

THE WITNESS: I think there is a mistake on that cover there.

MR. ERNST: Let me just mark these first, then we will get——

THE WITNESS: There is a mistake on that cover there, I guess. It means all permits issued in that time.

(Marked Exhibit P-10 for identification.)

MR. HAMILL: You don't want all of the papers that accompanied every application for the past twenty-five years, do you?

MR. ERNST: Let's get to what I want, when we mark these for identification.

MR. HERSHENSTEIN: What number is that?

THE CLERK: P-10.

MR. ERNST: Another instrument for identification entitled "permits granted for street meetings, religious," consisting of two pages, legal cap.

(Marked P-11 for identification.)

MR. ERNST: Next, I think we can simplify this by giving one identification number, correspondence from Samuel L. Rothbard to Director Casey, originals of letters dated December 17, 1937, December 20, 1937, an undated letter marked "Received December 22, 1937,"

together with copies of letters addressed by Daniel Casey to Mr. Rothbard dated December 20, 1937, December 22, 1937, December 20, 1937, and December 22, 1937, together with a post office registered mail receipt date December 20, 1937. I think we can put those in one batch, all P-12.

MR. HERSHENSTEIN: They will be marked as one exhibit, P-12.

(Marked Exhibit P-12.)

MR. ERNST: P-13 would be orginal of letter addressed by Spaulding Frazer to Daniel J. Casey, dated December 23, 1937; a further letter addressed by the same party to Daniel J. Casey, dated January 3, 1938, together with copies of letters addressed by Mr. Casey to Mr. Frazer, dated December 27, 1937, December 30, 1937.

(Marked P-13 for identification.)

MR. ERNST: Now, if your Honor please, in respouse to Mr. Hamill's suggestion, I want to make clear again seriatim the additional information that we require and documents that should be produced and which we believe were called for under the subpœna.

1. All records concerning applications for outdoor meetings made during the past three years, whether the applications were granted, pending, or denied, and whether the records consist of records subsequently established in the office of Mr. Casey, or whether they consist of original letters, resolutions, documents, or other instruments.

MR. HAMILL: Now, do I understand you to mean, Mr. Ernst, that he is to transfer from his files to this court room everything for the past three years, in the way of applications, documents, records and papers pertaining to applications for permits?

MR. ERNST: Exactly, sir.

MR. HAMILL: Those are official records and on account of the inconvenience of them, we object to the demand for them, and say that if plaintiffs want a certified copy, we will be glad to give them, on the payment of the proper fees, or, in order that the public business may not suffer by the transfer of public records, he must tell us what paper he wants.

I cannot say to the Register of Essex County or Hudson County, "bring me all the records of deeds, mortgages, assignments of mortgages, and pile them up in this court."

The Court would say "which one do you want, and I will make him get it."

MR. ERNST: Your Honor——

MR. HAMILL: I will finish in a minute, Mr. Ernst.

He cannot simply say, "clean out your office with everything in it and put it in the court room until I go over it on a fishing expedition to find out which one I want.". The Court will say, "what one do you want?" and then say to the witness, "Go and get it." But to say, "within a certain time I want all of your records," we say, "why?"

"Because I have something up my sleeve I won't tell you."

We say, "Well, it must come down out of your sleeve and you must tell us just what particular one you want," and not ask us to transfer the whole office over. That would be unreasonable.

THE COURT: Well, will you permit——

MR. HAMILL: As examination of them? Oh, yes, yes.

MR. ERNST: Oh. Now let's get this clear on the record.

MR. HAMILL: Yes, I will permit—Mr. Ernst can come over and go through them all.

MR. ERNST: No, I take it that Mr. Frazer any myself can send someone over to look over such files?

MR. HAMILL: I don't see any objection to that.

MR. ERNST: And on what kind of notice? So we are not held up.

MR. HAMILL: Oh, on a telephone notice.

MR. ERNST: Telephone notice.

MR. HAMILL: That is all right. There will be no trouble about that. When do you want it? By next Monday?

MR. ERNST: Well, no. I will let you know before we adjourn court, just when we will come over.

MR. HAMILL: All right.

By MR. ERNST:

Q. Mr Casey, will you describe to me just what those records are that are kept that we will find, in a general way?

A. Well, I think all applications from the time that I have been Director of Public Safety you will find there.

Q. I am not talking about from that time. I am saying during three years we will find all the applications——

MR. HAMILL: Mr. Ernst, before we leave that, and only for this purpose, maybe you ought to put in writing what you want and call on us to admit it. Maybe that would serve your purpose.

MR. ERNST: No.

MR. HAMILL: Or would you rather investigate?

MR. ERNST: We are going to look them over.

MR. HAMILL: All right.

Q. Would all the applications be in writing?

A. No, they wouldn't, because they might be filed at police headquarters.

Q. No, I am not——

A. Just a minute.

Q. I think you misunderstood me.

A. I will explain them to you.

Q. Just a moment. You misunderstood me.

A. All right.

Q. Your answer was not responsive. I am not asking where they are filed. I am saying, are all applications always made in writing by the applicant?

A. They are not.

MR. HERSHENSTEIN: He says no.

Q. Now what is the rule in the administration of your office with respect to this particular ordinance, as to when the applications must be in writing and when they may be made out otherwise.

A. Just a moment, I will explain that to you.

Q. That is what I want.

A. From the time that I have been in that office——

THE COURT: Might I ask counsel what exhibit in the bill——

A. I——

THE COURT: Just a minute.

THE WITNESS: Excuse me.

THE COURT: What exhibit in the bill is that ordinance? I have the other one but I want to look at this one.

MR. FRAZER: Exhibit B, I think.

THE COURT: Exhibit what?

MR. FRAZER: Schedule B, I think it is. No. Just a minute. Here it is.

THE COURT: A; it is A. I have it. Regulating halls and other places for public——

MR. FRAZER: No, no.

MR. ERNST: E is the one at the moment we are discussing.

THE COURT: D?

MR. ERNST: E, Exhibit E.

THE COURT: All right, all right, I have it.

MR. HERSHENSTEIN: I think there was an unanswered question.

MR. ERNST: The Commissioner was going to explain when they were in writing——

MR. HERSHENSTEIN: Since he became Director of Public Safety.

A. Since I became Director of Public Safety, it has been mostly written applications that I have received, and there have been applications issued for religious meetings yearly, and they come in and get them. That is about all I can remember.

Q. And your recollection is that the only applications not in writing were the religious meeting applications?

A. I think so. I wouldn't be certain of it, your Honor —or Counsellor.

Q. Thank you. Do you look at every application yourself or is somebody in your office assigned to make a report to you on each application?

A. My secretary. They go to him.

Q. And what does he do with them? Does he make a report to you?

A. He tells me about it yes.

Q. And does he make an investigation as to the application?

A. We make an investigation, yes. If it is somebody that is applying for an application that we don't know.

Q. Now, if you know the party, you don't make any investigation?

A. It is according to who the parties are.

Q. Yes. So that some of the parties whom you know you would also investigate?

A. Yes.

Q. What?

A. Yes.

Q. Now in your investigation under this ordinance, do you ever get in touch with the applicants themselves, to ask questions and get information?

A. I have, yes.

Q. In what cases other than those involved in this particular litigation?

A. (No answer.)

Q. Just give me one instance, one example.

A. Well I have had people come in there. Off hand I couldn't say. That is just a matter of routine, and I don't pay much attention to it.

Q. What don't you pay much attention to?

A. To the different applications that come in.

Q. Do you pay attention to the applications that come in, to the names of the persons who are to speak?

A. Yes, I do. I look it over.

Q. That is important?

A. Yes, very much.

Q. Would you say that that is one of the determining factors in your mind, as to who the person is who is going to speak?

A. Well, I find out who the speakers are going to be there, often.

Q. Do you ever issue permits to organizations not knowing who the speakers are to be?

A. No, sir.

Q. In other words, you have never issued an application to an organization asking for leave for a street-corner permit for a meeting without knowing the names of the speakers?

A. To the best of my knowledge, no.

Q. What do you do in the cases of permits issued for a year or more, in respect to prospective speakers at the later meetings?

A. The persons that is going to talk at those meetings go in and notify the captain of that precinct that they are going to have a meeting on a corner that is allotted them, allotted to them, on such a night, day and date.

Q. And is there a printed form or any rule or regulation issued as to this procedure of going in——

A. He has a permit——

Q. Just a minute. Let me finish.

A. Go ahead.

Q. —to this regulation, which directs people to go to the captain of a precinct for the right to speak at a certain time?

A. Well, with a yearly permit, he goes in and shows the captain his permit.

Q. Under what ordinance do you issue yearly permits? Under what power?

A. It has been the custom, and I didn't change it. I couldn't tell you. I——

Q. Did you get advice of counsel ever on it?

A. No, sir, I did not.

Q. Do you know if any predecessor in office got advice of counsel on it?

A. I couldn't tell you. It had been the custom for years.

Q. And how long does that custom run back, to your knowledge?

A. Well that custom is practically as long as I have been in the police department.

Q. How long is that?

A. About 27 years.

Q. And that custom ran back then before the date of this ordinance, didn't it?

A. Certainly.

Q. Now we are only talking about your operation under an ordinance, and the ordinance is 1930. I take it that the ordinance, and I think you agree with me, purports to give you power to issue permits for street-corner meetings?

A. It does.

Q. And do you under that ordinance delegate to the captain of a police precinct the right to determine whether a particular person is to speak at a particular corner under a yearly permit?

A. A man that has that yearly permit, and the captain is notified about it, that man goes in there; he is the man that talks on that corner regularly once a week, and he has never been stopped.

Q. Is there only one such permit?

A. Oh no, there are several of them. I guess that list will show you plenty of them.

THE COURT: Take your list, Commissioner, and illustrate, will you, from that list? Here it is.

MR. FRAZER: The top one.

THE COURT: The top one.

MR. ERNST: One is political and one is religious.

THE COURT. I thought there was another one, wasn't there?

MR. ERNST: No, one is political and one is religious; no economic list.

A. It is marked right on here. (Indicating.)

Q. I want to get this clear; under the 60-day and 90-day and year permits, I take it that it isn't always the same man who is going to speak, is it?

A. Well, I never checked back on them, Counsellor.

Q. But I understood you to say before that the man who held the 90-day or year permit would walk into the precinct and tell the captain who would talk at the particular time allotted?

A. He would—well, if you understood me to say that, I—

Q. I don't know.

A. I think that isn't what I said, or what I meant.

Q. Now, tell me what happens, if I have——

A. But here is what it is: the man, he is a minister or a clergyman or something that has that permit with the church there, and when he wants to hold a meeting, he is well known to the captain of the precinct, he goes in and tells him he is going to have a religious meeting on such a corner on such and such a night.

Q. And the captain would have no authority to say, "you can't have so and so speak," that is just an automatic notice that he gives, is that it?

A. No. He didn't tell him who should speak or who shouldn't speak there.

Q. I want to get this clear, maybe I am not following you correctly.

Assume I get a permit for an order from you to speak at a certain corner and I get the permit not as an individual but let us say under the name of a church, as some of these permits here indicate; I am a church for the moment, and I have a permit for a year. Do I, the holder of the permit, that is, the church, go around to the station house each week and notify the captain as to who will exercise that permit?

A. That permit was issued to that man that applied for it to talk there.

Q. But if you follow me a moment, these permits are not all of them to individuals; these permits run to either incorporated or unincorporated organizations. I refer, for example, to a permit for one year, the Volunteers of America. Now, when that permit is issued to the Volunteers of America do your files show the names of the people who are going to speak under the auspices of the Volunteers of America?

A. It does no.

Q. It does not. In other words, the name of the person who is going to speak is not considered by you material in that situation before you grant the permit?

A. It is not.

Q. Is that right? So that you are in effect saying that the name of the speaker is not the determining factor, is that right?

A. Not in a religious meeting, no.

Q. Now, let us see some of the other meetings. Have you a record of meetings that are not political or religious?

A. You have every record that I have there, practically all the permits that were issued.

Q. I tell you why I ask you, Mr. Casey. This record was the record of religious permits; the one I hold in my hand, P-10 for identification exhibit, is entitled "Political Party Permits," and I want to know whether you ever issued any permits in the sphere of life we might call economics or general welfare, that is, neither religious nor political party. Do you ever issue any such permits?

A. I don't quite get that, Counselor.

Q. This exhibit here—let me put it this way—what you have produced—and I understand it is all-inclusive—is a record of all permits granted over a period of years. The one record is entitled "Permits for Religious Meetings," the other is entitled "Permits, &c. to Political Parties."

A. Would you mind letting me look at it?

Q. Certainly. My question, so you get it clearly, is: Were there no permits ever granted other than to political parties and religious groups?

A. There have been permits issued to the Socialist Party, as it states here.

Q. That is a political party; and what I am asking is were there any permits issued that are not to political parties or religious groups?

A. Offhand I cannot say.

Q. In other words, if there were such a permit granted it would show up in one of these two lists?

A. Most likely, yes.

Q. Well, I don't know what you mean by "most likely."

A. I have had a thorough check made of them through our record books, copies of them made and submitted here.

Q. Let us get this clear. I understood that these records were all-inclusive as to all permits granted of all kinds.

A. Yes, sir.

Q. Well, then, wouldn't they show up here?

A. They ought to.

Q. Now, where would, in this document, an application for a permit of the Catholic Workers Association appear?

A. I don't know, it ought to be there.

Q. Well, in which group would it be, political or religious?

A. I think it would be in religious.

Q. Might I suggest, Commissioner Casey, Mr. Hershenstein has pointed out that my confusion is perhaps due to the fact that the caption is incorrect.

MR. HERSHENSTEIN: The caption may be incorrect.

Q. And if Mr. Hershenstein would care to change his caption——

THE WITNESS: I told you that.

MR. HERSHENSTEIN: Let the exhibit be as it is; we will change it afterwards.

Q. Now, Commissioner Casey, if there is a meeting held without a permit what is done in the way of stopping the assemblage or the meeting?

A. That is according to what kind of a meeting it is.

Q. Well, what do you mean by that?

A. A meeting that is nobody there, the officer just tells them "You cannot have the meeting, no permit."

Q. If nobody is there?

A. I mean if the crowd is sufficient for that patrolman to handle it, if he hasn't got a permit he is informed of such and he is not allowed to hold the meeting.

Q. You mean is informed that he cannot have the meeting?

A. He is violating the law.

Q. And he is warned?

A. Yes, sir.

Q. If it happens a second time is he likely to be arrested?

A. No.

Q. There would be no possibility of arresting a group of people who gathered together to talk the first time that that group gathered under any powers of restriction of lawful assemblage?

A. No, sir.

Q. You are familiar with the incident of the arrests made for unlawful assemblage in respect to CIO workers and others?

A. When was that, Counselor?

Q. November 29th.

A. I am.

Q. How do you distinguish that policy of your department and the police department from the example you have just given me where, as I understand it, you say that if people gather together you just warn them, tell them to get a permit?

A. That was an unlawful assembly; they advertised in the papers how they were going to come in three thousand strong and march in the city and openly defy the police department.

Q. Now, you say they advertised in the papers?

A. Yes, sir.

Q. Did you see any advertisement in the papers?

A. There were statements in the papers rather, no advertisement; excuse me.

Q. Now, let us be practical, Mr. Casey. Isn't it a fact that you don't believe everything you see in the newspapers?

A. Well, I always read between the lines too.

Q. Now, isn't it a fact that your highest official of your community has only recently complained that the newspapers were distorting the news against him entirely?

MR. HAMILL: I object.

A. He can answer that for himself; you are having him here.

MR. HAMILL: How does that bind this witness?

MR. ERNST: I just wanted to know if he knew it.

Q. I just asked. Do you know whether Mayor Hague——

MR. HAMILL: Object.

Q. (Continuing.) —issued a statement——

MR. HAMILL: Object.

Q. (Continuing.) —indicating that what you see in the newspapers shouldn't always be believed? I just want to know whether you know it or not.

MR. HAMILL: That may have been when Mr. Ernst made the statement that machine guns would crack on the streets of Jersey City and he couldn't believe it, that Mr. Ernst meant it.

A. Your Honor, I think Mayor Hague can answer for himself that question.

Q. I just want to know whether you know about the statement. I am not asking whether you believe it.

A. I am just answering for myself.

Q. I just want to know if you believe the statement.

A. I am not going to argue about it.

MR. ERNST: Judge, I just want to ask the witness if he knows of the statement.

THE COURT: I sustain the objection.

THE WITNESS: What's that, your Honor?

THE COURT: I sustain the objection. Let me ask one question:

Do you remember, Commissioner Casey, what newspapers or what issues of newspapers carried the statement you allege?

THE WITNESS: Yes, the Bergen Record, I think, on February the 22d; I think the Newark News on the 29th.

Q. Of what month?

A. Of February. I think the Newark News on the 28th or 29th of February; the Jersey Journal on the 24th of February, and the Hudson Dispatch, I think, on the 23d of February, 1937.

THE COURT: Did the statements purport to quote anybody?

THE WITNESS: Quoted—yes, they did, your Honor.

Q. And who did they quote according to your recollection?

A. Quoted Mr. Carney. I think the papers are here.

MR. HAMILL: We have the papers here if Mr. Ernst wants them.

THE COURT: You have the actual papers right here?

MR. HAMILL: Yes, we have the actual papers right here, the accounts in the newspapers.

Q. I just want to get the recollection of the Commissioner. As I take it, some time from around February there were quotes from Mr. Carney in the newspaper, which I take it in part were used as a foundation for your decision not to grant some permits; is that right?—in part. I am not saying exclusively.

A. Well, in part yes, but I wouldn't say wholly.

Q. Now, those were purported quotations from Mr. Carney, is that right?

A. Yes.

Q. In February, 1937?

A. Yes, sir.

Q. Did you ever get in touch with Mr. Carney to find out whether he had been properly quoted, assuming he was quoted, in those months?

A. I don't see why I should.

Q. I didn't ask you that.

A. I did not.

Q. I asked you did you ever. You didn't?

A. No.

Q. Do you ever in connection with the granting of permits request that you be shown a copy of the speech in advance?

A. Never asked for it.

Q. Do you believe that you have the power to ask for it and procure it?

A. Well, I have never done it.

Q. I just want to know whether you have.

A. It is not what I believe or what I think; it is what I do.

Q. That's right. Do you claim to have the power to ask it?

A. I don't claim anything.

Q. You don't claim to have that power?

A. No.

Q. Now, you do claim to have the power to have a petitioner indicate the subject of his speech?

A. What's that?

Q. You do claim to have the power to ask an applicant to outline the subject of his speech?

A. I have never done it.

Q. Now, Commissioner, if you will just keep that in mind a moment, we will go over a few applications. Let me make sure you understood my question. As I take it, you say that you have never done what?

A. That I have never asked anybody what their subject was going to be, not to the best of my knowledge.

Q. Do you dictate the letters that go out in respect to applications for permits if they are signed with your signature?

A. Yes, sir.

Q. Nobody ever signs your signature for you?

A. Why, certainly, my secretary has a perfect right to; I give him that power.

Q. Do you recall whether in respect to the correspondence with Mr. Rothbard and Spaulding Frazer you personally signed those letters that are offered?

A. Well, if I could see them I will tell you; if you will let me look at them I will tell you whether I did or not.

MR. HERSHENSTEIN: Those are not originals, those are copies. If you will give us the originals we will look at the signatures.

Q. Here they are. I show you letter of December 27, 1937, purporting to be signed by Daniel Casey.

A. That's me.

Q. Letter of December 30, 1937.

A. I signed that.

MR. ERNST: Is Mr. Rothbard here?

MR. STOFFER: He was here.

MR. FRAZER: He stepped out.

Q. Do you recall, Commissioner, an application having been filed around December 17, 1937, on behalf of the American Civil Liberties Union?

A. Well, I received it; if I got a copy of it I could tell you; offhand I couldn't tell you what dates I received it.

Q. Will you look at these exhibits?

A. Yes, I remember those letters.

Q. Now, in that application for a permit there was set forth the subject of the meeting, is that right? Just read it and answer yes or no, whether it was set forth. In the first paragraph, Mr. Casey, doesn't it say that "said meeting will be on the subject of civil liberties?"

A. Yes, sir.

Q. Then did you not write a letter in response to that application and say, "We would like to know the purpose of the meeting"? Look at the last paragraph in your letter December 20th.

MR. HAMILL: Your Honor please, the letters are in evidence. Whatever is in the letter, of course, he did say. What is the need of calling the Court's attention——

A. If it is in my letter it must be so, Counselor.

Q. No, I just want to refresh your recollection on your statement that you were not concerned with the subject of the meeting, what was being said is that right?

A. I said "to the very best of my recollection."

Q. Well, I have refreshed your recollection, so that at least in one instance you do find out what is to be said?

A. Yes, sir.

Q. Now, let us go further. In the letter of December 20th the applicant, through Mr. Rothbard, the attorney, replied specifically what would be discussed at the meeting, is that right?

A. Discuss civil liberties.

Q. Specifically going to petition the mayor and other responsible officials for the exercise of the rights of free speech, free press and other civil liberties, is that right? You find that there?

A. That's right.

Q. Now, in your letter of December 22d—I will quote from it so you can refresh your recollection further—you replied: "Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated"? That is in your letter, isn't it?

A. That's right.

Q. Now, under what authority of the ordinance or otherwise, or for what purpose did you make that statement,

asking them to give you a bill of particulars as to the justification for their thinking they had a grievance?

MR. HERSHENSTEIN: Your Honor please, that is objected to; that is in reference to an inquiry made by Mr. Rothbard. He simply says, "If we have violated them," he asks, "In what respect have we violated them?"

MR. ERNST: That is exactly my point, that the Commissioner of Public Safety clearly, in our opinion, under the ordinance has no right to ask an applicant in advance "What are you going to say?", write back and say, "I don't agree to your position" and then make him give a bill of particulars on what he is going to say. If that isn't pre-censorship of free speech, what is? I want to know for what purpose and to what end he made the statement asking for a bill of particulars and saying he disagreed——

MR. HAMILL: Isn't it one of the (interrupted).

THE WITNESS: May I answer the question in my own way?

THE COURT: Yes, go ahead.

A. Counselor, my reason for that was this: I have received complaints from veterans, different business houses, for to stop certain people talking in our city. I guess you are aware of that.

Q. As of what time are you talking now?

A. I am talking right along.

Q. During December?

A. During that time.

Q. Prior to December 22nd?

A. Let me say a word; I am trying to explain to you what it is.

Q. No, no, just wait a minute. I want to know whether it is prior to December 22d.

MR. HERSHENSTEIN: He says about that time.

Q: No, no, I want to know whether you are talking about prior to December 22d because that is when you wrote.

A. To tell you offhand I couldn't say, I wouldn't go on record.

Q. All right. You are not sure whether it is prior or not?

A. I am not sure. We have received complaints, different people coming in there to talk, they came in there and the attitude of the citizens of Jersey City was that talking would cause riots, bloodshed and disturbance, and I as Director of Public Safety, it was my duty to protect life and property, which I was doing to the best of my judgment.

Q. Now, let's get that philosophy, we will go to that for a moment. Let us assume that Frank Hague——

A. I wish you wouldn't talk about Frank Hague, counselor; he can talk for himself.

Q. I am going to let him talk for himself, plenty. Let's assume that you and Frank Hague are desirous of making a speech at a street corner in some community in the United States and let us assume that the chief of police of that district procured a statement from twenty or fifty thousand workers saying they resented you and that you were dangerous, and that there would be a riot; do you think that you ought to be allowed to speak or not?

MR. HERSHENSTEIN: Wait a minute.

A. I wouldn't go there.

Q. What?

A. I wouldn't go there; if I wasn't wanted I wouldn't go into any community where I am not wanted.

Q. Now, let us assume that you go into New York—and I take it you go there at times?

A. I do, regularly.

Q. Do you ever make a speech there?

A. I do not.

Q. Do you intend to?

MR. HAMILL: I object to that question. Let us be orderly about it.

THE COURT: Sustained.

Q. Let us take it this way, Mr. Casey: Your theory is that if people protest against a meeting that then you are afraid there may be a riot and that therefore you deny the permit, is that it?

A. Well, when it will draw a crowd that is hostile—mob psychology is a terrible thing; you will have to agree with me on that.

Q. No.

A. You don't agree with me. And I say if you get a crowd of twenty or twenty-five thousand hostile people it would take a reginfent of soldiers to stop them from committing riot and violence and that is what we are trying to stop.

Q. Now, in this particular situation do you believe for one moment that Hugh Kelly would come there and make a disturbance?

A. He is there.

Q. Mr. Kelly, for example, or any of the veterans or any of the people at the Armory?

A. Mr. Kelly lives in Jersey City, has lived there all his life, is a veteran.

Q. I didn't ask anything about where he lived.

A. Just a minute. He is, I think, director or something of the veterans of the state.

Q. Mr. Casey, will you please——

MR. HERSHENSTEIN: He is trying to answer.

MR. ERNST: I didn't ask him, your Honor please, where Mr. Kelly lived——

MR. HEISHENSTEIN: You spoke of Mr. Kelly.

MR. ERNST: Or what he is director of. I merely asked him did he believe that Mr. Kelly or any of the people that protested would have gone to a meeting and committed violence.

A. That is hard for me to say. I wouldn't say Mr. Kelly would but Mr. Kelly is not accountable for the actions of 25,000 other people.

Q. All right. Do you believe that any one of the persons from whom you had a communication, who signed any communication of protest, ever, at any meeting, would have gone with a gun or brickbat or stone and committed violence?

A. That is hard for me to say.

Q. You are not sure of it?

A. I wouldn't give an opinion on it.

Q. Now, let's assume that some other person in the community applied for a permit and ten thousand or twenty, whatever your figure was, of the workers of the community would write you a letter and say, "Commissioner Casey, if this man speaks there may be a disturbance," would you take a similar position or would you discriminate one as against the other?

A. I would use good sound judgment on it, on how I would act.

Q. Now, if you got a communication from any group saying that there would be twenty thousand people protesting and there might be a disturbance wouldn't you act always the same?

A. No doubt about it; if there is going to be a disturbance, that is my duty to prevent it.

Q. Now, do you look into the facts at all of whether the applicant is going to create a disturbance?

A. The applicant by his talk can create a disturbance.

Q. Do you look into the experience of the applicant in his speech-making elsewhere to find out whether it is likely he would make a disturbance?

A. I have checked up on it, yes. I found out where they had disturbances in other places where people have spoken.

Q. Now, you denied a permit for Congressman Maury Maverick. Did you make any investigation as to the hundreds, maybe thousands of speeches that this congressman in the United States Congress has made throughout the land for the past year or so?

A. I denied it, yes.

Q. No, did you make any investigation?

A. About him, no, not in the least.

Q. So you didn't know whether Maverick has or has not talked elsewhere in Jersey, New York or Pennsylvania without any disturbance?

A. I think he spoke here in a hall, if I am not mistaken, and he wasn't bothered.

Q. No, did you make any inquiry as to whether or not Congressman Maverick had spoken in open air street corner meetings in any other cities of the United States?

A. I did not.

Q. You did not. You didn't think it your duty to find out at all in coming to a conclusion as to whether he should speak, as to what his experience had been in other places?

A. I took into consideration the protests that I received against his talking.

Q. You didn't take into consideration at all, I take it, his experience at other street corner meetings?

A. No, I did not.

Q. Now, that applies also to Congressman Allen, you denied a permit for Congressman Allen to speak?

MR. HERSHENSTEIN: He happens to be one of the speakers of the Civil Liberties Union.

THE COURT: Where is he from?

MR. ERNST: Pennsylvania. The application and the correspondence show that the Civil Liberties Union

applied for four speakers. I am examining this witness as to the use of this alleged constitutional ordinance.

A. I am telling you why I refused them.

Q. As applied to those people.

A. The answer is the same.

Q. You didn't make any inquiry. Now, if you had heard and learned that Congressman Maverick, a war veteran, is one of the pronounced pacifists of the country would that have affected your judgment?

A. Not with a hostile crowd.

Q. Would it have changed your judgment and your conclusion if you had discovered that Congressman Maverick had made a thousand speeches, outdoor street corner meetings, in other cities of the United States without a semblance of disturbance?

A. Well, there is no doubt about that. The people didn't protest against him where he spoke.

Q. Now, let's take Congressman O'Connell. Did you make any inquiry prior to the refusal of the permit under the application of December 22d as to whether or not there had ever been a single disturbance anywhere in the United States in a hall or out where Congressman O'Connell spoke?

A. Never bothered.

Q. Never did?

A. Never got any complaints, never saw of any complaints where he was talking.

Q. But you didn't make any inquiry?

A. I didn't, no.

Q. You didn't think it was your duty to make any inquiry from the congressmen themselves in view of the fact——

A. The same situation, counselor, didn't present itself to the Director of Public Safety or the mayor of that city where they spoke that I was presented with here in Jersey City.

Q. I understand that fully, but I didn't ask you that. I asked you did you make—and I now ask you again did you make any inquiry whatsoever as to the past experience record of these three congressmen as to any possible disturbance.

A. I didn't inquire about them, no, only what I read in the papers in reference to them.

Q. And you believed what you read in the papers?

A. I told you before I can read between the lines.

Q. All right; and you read in the papers prior to December 22, when the application came in, something about Congressmen Maverick, Allen, and O'Connell possibly making speeches which lead to disturbances—you don't mean to imply that?

A. I didn't say that.

Q. What did you read in the papers prior to December 22d?

A. Well, I couldn't tell you what I read, it is so long ago. I have read quite a lot of articles about it.

Q. What is the general impression you got of these Congressmen from the papers?

A. Well——

MR. HAMILL: I object to that.

MR. ERNST: His best recollection of his impression.

MR. HAMILL: Well, his best recollection is that he refused the permit.

A. Well, my best recollection and what I think might not agree with what you think.

Q. No.

A. I am entitled to my own opinion, I think.

Q. Sure.

A. I don't have to express it.

Q. I would like to know what your impression was from the newspapers.

A. I don't feel like expressing my opinion.

Q. You don't like to. Now, there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street-corner meetings, and whether there had ever been disturbances?

A. I never heard of the gentleman until I saw his name on the application.

Q. So he was not stamped as not being allowed to come into Jersey City, in your mind, because of being a Red or radical or dangerous, is that right, December 22d?

A. I forgot all about Mr. Ernst at the time.

Q. What?

A. I forgot all about him. I thought you were out of the picture.

Q. December 22d, this is. At that time was there anything in your mind that would lead you to believe that the fourth speaker, Ernst, would, by what he would say at a meeting, create a disturbance?

A. Not at that time, no, sir.

Q. Not at all. But at that time, you declined to grant a permit?

A. Certainly.

Q. All right.

A. And I gave you my reasons for it.

Q. All right, we will come to those in a moment.

Now, one of the reasons that you denied the permit was, and there are many of them, I take it, that the civil liberties that these men discussed prevailed in Jersey City. Is that one of the reasons?

A. What is that?

Q. If I am not clear, let me give it to you again.

A. That what prevailed in Jersey City? I don't get what you mean.

Q. This correspondence says that these speakers were coming to complain, as they saw it, about the absence of certain civil liberties. The correspondence shows that you wrote back and said that the application was in error be-

cause the civil liberties to be discussed prevailed, that there were such civil liberties, and you disagreed; and so I ask you, isn't it a fact that one of the grounds on which you denied the permit for these four speakers was that you found, as stated in your letter, that they were going to state grievances to the Mayor about the absence of civil liberties, which grievances you wrote in the letter were unfounded; isn't that one of the reasons for denial?

A. If I wrote it, it must be so.

Q. I am asking you, in addition to being so, wasn't it a fact, in your judgment, in denying these men the right to speak in Jersey City?

A. Do you mind letting me see what I stated in that letter?

Q. The letter, yes; right here. I can't give you the original, but this is the letter (showing to the witness).

MR. HERSHENSTEIN: I am afraid Mr. Ernst has misinterpreted that sentence he now refers to the witness. That is not a reason why any permit was refused, or grounds for a refusal. It is a statement by this Commissioner in reply to a question by Mr. Rothbard. He asked him what the civil liberties were we were denying. He said, "We don't deny any such civil liberties. Will you tell me what we are denying?"

That is not a reason he gave for the refusal of any permit. Read the letter.

MR. ERNST: The letter reads, we may as well have this in the record——

MR. HERSHENSTEIN: Yes, I want it in.

MR. ERNST: "In my letter to you of December 20, 1937, I requested you to let me know what is the purpose of the meeting and who are the speakers who will address the meeting."

End quote for the moment, and I take it that Mr. Rothbard gave you the names of the speakers who

would address the meeting, and answered your inquiry as to the purpose.

Going on with the letter: "You informed me by the letter hereby answered that the purpose of the meeting is to petition the Mayor and other responsible officials for the expression of free speech, free press and other civil liberties."

Continuing with the letter:

"Since these rights and these other civil liberties you refer to prevail fully in Jersey City, will you please let me know in what manner you consider them infringed, restricted or violated."

Q. Now, I ask——

MR. HERSHENSTEIN: Read the next paragraph. There is no denial of a permit.

MR. ERNST: "You further inform me that on account of the delay in obtaining the permit it may become necessary to substitute one or two other speakers in place of some of the speakers originally scheduled. Will you please let me know who is the substitute speaker or who are the substitute speakers whom you intend to have take the place of the speakers mentioned in your letter."

MR. HERSHENSTEIN: There is no denial of a permit in that letter, sir.

Q. Now, I ask the witness this question: In order to make up your mind as to whether or not you should grant a permit, you made an inquiry as to the purpose of the meeting, is that right?

A. Yes.

Q. In order to get to a conclusion in your mind as to whether or not you should allow the meeting, after the purposes were set forth, you went further and wrote back and said: "I don't agree with the basis of your purpose because

in effect," you said, "your purpose is no good because we have got civil liberties," is that right?

A. Well, we have civil liberties.

Q. And you said so?

A. Yes, I said so.

Q. Now, for what purpose did you include in a letter in regard to an application for a right to a street-corner permit your opinion as to whether you have got civil liberties, if it were not in aid of making up your mind as to whether or not you would grant the permit? What other possible reason for it was in the letter? Is there any other possible reason, or justification for it?

A. Well, at that time I couldn't state now how I made my mind up to it. I must have had some reason when I done it.

Q. You don't have any general rules and regulations laid down, and standards, as to what kind of subjects may be discussed, and whether people can be for or against things; you have no rules and regulations?

A. I have no rules and regulations governing that, no.

Q. It is just good common sense——

A. Good common sense and sound judgment.

Q. And reading the newspapers——

A. Now, just a minute.

Q. Just a minute; and reading the newspapers between the lines?

A. Well, I——

Q. Didn't you say that before?

A. I did, yes.

Q. Now, that is one of the elements.

A. But you are misconstruing my meaning.

Q. Now, will you explain what you mean by reading the newspapers——

A. I mean by using good sound judgment, to stop the commission of violence, riots and bloodshed.

Q. That is right.

A. That's why I refused to issue the permits.

Q. That's right. Because in your judgment——

A. In my judgment, yes.

Q. —you thought that there might be some violence?

A. No doubt about it.

Q. All right, that is what you thought. Now, you had no evidence that Congressman Maverick, Allen, O'Connell or Ernst would preach violence; did you have any indication of that?

A. It wasn't what they would preach, but how the mob that went there would take it.

Q. That is right. So that if they would have preached pacificism, which Maury Maverick preaches throughout the land, and the mob didn't want to hear it, you would be afraid of a riot and you wouldn't allow the meeting?

MR. GLAVIN: Oh, I object to that on the ground that he is trying to get from this witness and probe into his mind what he would do under certain circumstances. There is a set of facts here on a meeting, and those facts should be adhered to, and what he did, not what he would do under other circumstances. He could go on indefinitely, setting out cases for him that he might rule on.

MR. ERNST: I will put the question otherwise, your Honor.

MR. GLAVIN: What difference would it make?

THE WITNESS: Just a minute, your Honor.

THE COURT: There is no question pending.

MR. ERNST: I will state it otherwise.

Q. In denying a permit of this nature, you are not concerned with what the speakers are going to say, is that it?

A. I am not concerned with what they are going to say if they are not going to commit violence and riots and bloodshed.

Q. If not what?

A. If riots are not committed.

Q. But this application for the three Congressmen, for example, was denied irrespective of what they would say, because you feared there would be disturbance?

A. To the best of my knowledge I received protests against them talking.

Q. But you didn't know what the speakers would say, did you?

A. No, I didn't, but they protested.

Q. That's right.

A. Against talking.

Q. So you denied the permit without any regard to what the speakers would say, and solely because of the protest?

A. The protest, yes.

Q. Solely because of the protest. Now, if the protest is substantial enough, you deny the permits, is that right?

A. By all means, if violence is going to be committed, and bloodshed and riots.

Q. And you do not believe it is the duty of your police department and yourself to protect the rights contained in the constitution of the State of New Jersey and the United States; the right of peaceful assemblage and free speech, even against the protest of a mob?

MR. GLAVIN: I object to it on the ground it calls for a legal conclusion, and there is an ordinance in effect in Jersey City under which Commissioner Casey is operating, and what he thinks or what he does not think is of no concern and is immaterial in this case.

THE COURT: Well, let me put an extreme case. I don't want to trap you, Commissioner, and maybe I will just leave this question in the air:

Supposing, for instance, the Chief Justice of the United States wished to come and speak in Jersey City, and for some reason the people of Jersey City objected

to his speaking, protested against his speaking. I mean that is possibly—not only possibly, I am sure it is actually a defensible case.

MR. HAMILL: Yes.

THE COURT: Would, under this ordinance, either the authorities in Jersey City or the Commissioner feel that if the protests would result in their opinion in bloodshed and riots, that the Chief Justice should not be given police protection?

THE WITNESS: That is a different case entirely, your Honor. The Chief Justice wouldn't have——

THE COURT: No, no, I am assuming it. I know it is a fanciful case.

THE WITNESS: Well, that——

THE COURT: I know it is fanciful, but I am assuming it.

THE WITNESS: Well, that is very different——

MR. HAMILL: I would rather say I will let the court answer that.

THE WITNESS? I think you had better decide that yourself, your Honor.

MR. HAMILL: Suppose the impossible happened, what would you do?

MR. ERNST: May I put it this way, which is not fanciful at all, and may pose the same problem:

Harold Ickes, secretary of the President's cabinet, is an active member in the American Civil Liberties Union. He actually spoke in New York City at the annual dinner of the American Civil Liberties Union in New York City. Now instead of Chief Justice Hughes, let us assume that the American Civil Liberties

Union made an application for Harold Ickes to speak under its auspices in Jersey City, and then you had the protest which the Judge hypothetically assumed, what would you do?

MR. HAMILL: I will carry on from there.

MR. ERNST: Now, I would like the witness to answer.

MR. HAMILL: I will take your answer.

MR. ERNST: No.

MR. HAMILL: Since you put in evidence the fact that Mr. Ickes was at a dinner, I will take your answer.

MR. ERNST: I would like.

MR. HAMILL: And suppose he did come, and it would start murder and bloodshed and riots, and disturbance, and you were Director of Public Safety, what would you do?

MR. ERNST: Mr. Hamill, you can ask me that when you put me on the stand.

MR. HAMILL: What would you do?

MR. ERNST: I would like to answer it.

MR. GLAVIN: Well, I object to it on the ground that under the ordinance the Commissioner has a right to investigate, and it is not fair and it is not proper to ask him what he would do under a set of circumstances, without giving him the opportunity to investigate.

MR. HAMILL: I would exercise my sound judgment.

THE WITNESS: Your Honor——

THE COURT: Wait a minute. We will answer that on Tuesday morning at ten-thirty, if we answer it at all. It is my motion day Monday, so we shall have to continue on Tuesday.

MR. ERNST: May I ask that the Commissioner by Tuesday, before Tuesday, give all the aid he can to our people, who will be over in his office on Monday to look through all the letters in the files?

THE COURT: I am sure he will.

THE WITNESS: You can have that, you can rest assured.

(Adjourned to 10:30 A. M. Tuesday, June 7, 1938.)